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3–8–04 Monday
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Contents

Federal Register

Vol. 69, No. 45

Monday, March 8, 2004

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:
13322 (Superseded by EO 13332).....10891
13332.....10891

Administrative Orders:
Memorandum of March 3, 2004.....10597
Presidential Determinations:
No. 2004-25 of February 26, 2004 10595

7 CFR
301.....10599

8 CFR

Proposed Rules:
208.....10620
212.....10620
1003.....10627
1208.....10627
1212.....10627
1240.....10627

9 CFR

Proposed Rules:
93.....10633
94.....10633
95.....10633

12 CFR
220.....10601
229.....10602

14 CFR
71 (15 documents) 10603, 10604, 10605, 10606, 10608, 10609, 10610, 10611, 10612
95.....10612
97.....10614

Proposed Rules:
39 (3 documents) 10636, 10638, 10641

21 CFR
870.....10615

33 CFR
117.....10615
165.....10616

38 CFR
36.....10618

40 CFR

Proposed Rules:
300.....10646

Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

Presidential Documents

Title 3—

The President

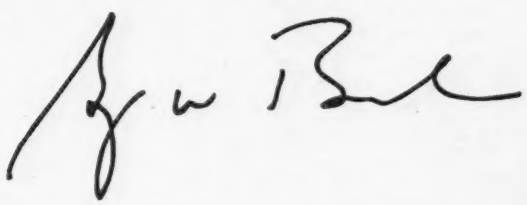
Presidential Determination No. 2004–25 of February 26, 2004

Determination that the Government of Pakistan is Cooperating with the United States in the Global War on Terrorism

Memorandum for the Secretary of State

Consistent with the authority vested in me by the Constitution and laws of the United States, including the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106)(the "Act"), I hereby determine for the purposes of that Act that the Government of Pakistan is cooperating with the United States in the Global War on Terrorism.

You are authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register.**



THE WHITE HOUSE,
Washington, February 26, 2004.

[FR Doc. 04–5274
Filed 3–5–04; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of March 3, 2004

Presidential Determination on Imports of Certain Ductile Iron Waterworks Fittings from the People's Republic of China

Memorandum for the United States Trade Representative

Consistent with section 421 of the Trade Act of 1974, as amended (19 U.S.C. 2451), I have determined the action I will take with respect to the affirmative determination of the United States International Trade Commission (USITC Investigation TA–421–4) regarding imports of certain ductile iron waterworks fittings (pipe fittings) from China. After considering all relevant aspects of the investigation, I have determined that providing import relief for the U.S. pipe fittings industry is not in the national economic interest of the United States. In particular, I find that the import relief would have an adverse impact on the United States economy clearly greater than the benefits of such action.

The facts of this case indicate that imposing the USITC's recommended tariff-rate quota remedy or any other import relief available under section 421 would be ineffective because imports from third countries would likely replace curtailed Chinese imports. The switch to third country imports could occur quickly because the major U.S. importers already import substantial quantities from countries such as India, Brazil, Korea, and Mexico. Because importers' existing inventories of imports will likely cover demand for approximately 6 to 12 months from the imposition of import relief, a switch from China to alternative import sources would not likely lead to significant additional demand for domestically produced pipe fittings, even accounting for a time lag in making that switch. Under these circumstances, import relief would provide no meaningful benefit to domestic producers.

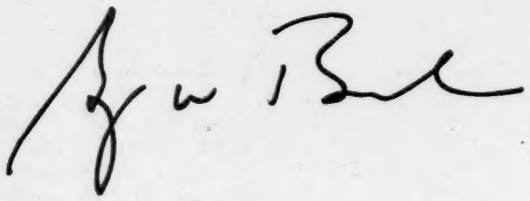
In addition, import relief would cost U.S. consumers substantially more than the increased income that could be realized by domestic producers. Indeed, the USITC estimated that its recommended remedy would generate a negative net domestic welfare effect of between $2.3 million and $3.7 million in the first year alone.

While not necessary in reaching my determination that imposing import relief would have an adverse impact on the United States economy clearly greater than the benefits, it is also worth noting two additional points:

- First, evidence suggests that domestic producers enjoy a strong competitive position in the U.S. market, and in fact the largest domestic producer recently announced price increases nationwide ranging from 8 to 35 percent. The two smaller domestic producers and the major U.S. importers have publicly indicated that they would follow these price increases.
- Second, in 2002 and 2003, imports of this product have been relatively stable in volume terms and have shown a slight decline in value terms.

The circumstances of this case make clear that the U.S. national economic interest would not be served by the imposition of import relief under section 421. I remain fully committed to exercising the important authority granted to me under section 421 when the circumstances of a particular case warrant it.

You are authorized and directed to publish this memorandum in the **Federal Register.**



THE WHITE HOUSE,
Washington, March 3, 2004.

[FR Doc. 04–5299
Filed 3–5–04; 8:45 am]
Billing code 3190–01–P

Rules and Regulations

Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–002–1]

Asian Longhorned Beetle; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by adding a portion of Cook County, IL, to the list of quarantined areas and restricting the interstate movement of regulated articles from those areas. This action is necessary to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States. We are also removing other portions of Cook County, IL, and portions of DuPage County, IL, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from these areas. We have determined that the Asian longhorned beetle no longer presents a risk of spread from these parts of Cook and Dupage Counties, IL, and that the quarantine and restrictions are no longer necessary.

DATES: This interim rule was effective March 3, 2004. We will consider all comments that we receive on or before May 7, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–002–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–002–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–002–1" on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Director of Emergency Programs, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It attacks many healthy hardwood trees, including maple, horse chestnut, birch, poplar, willow, and elm. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and wood debris of half an inch or more in diameter are subject to infestation. The beetle bores into the heartwood of a host tree, eventually killing the tree. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interiors of trees. Adult beetles emerge in the spring and summer months from round holes approximately three-eighths of an inch in diameter (about the size of a dime) that they bore through branches and trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery, maple syrup, and forest product industries could experience severe economic losses. In addition, urban and forest ALB infestations will result in environmental damage, aesthetic deterioration, and a reduction in public enjoyment of recreational spaces.

Addition to Quarantined Area

The ALB regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of the State of Illinois, a portion of Hudson County in the State of New Jersey, and portions of New York City and Nassau and Suffolk Counties in the State of New York are already designated as quarantined areas.

Recent surveys conducted in Illinois by inspectors of State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of ALB has occurred outside the existing quarantined area in Chicago, IL. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Illinois are conducting intensive survey and eradication programs in the infested area, and the State of Illinois has quarantined the infested area and is restricting the intrastate movement of regulated articles from the quarantined area to prevent the further spread of ALB within that State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to

prevent the spread of ALB to other States and other countries.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending the list of quarantined areas in § 301.51–3(c) to include an additional area in Chicago, IL. The quarantined area is described in the rule portion of this document.

Removal of Quarantined Areas

In an interim rule effective November 6, 1998, and published in the **Federal Register** on November 13, 1998 (63 FR 63385–63388, Docket No. 98–088–1), we amended the regulations by designating three areas in and around Chicago, IL, as quarantined areas, including areas near Addison in DuPage County, IL, and portions of the Village of Summit, IL.

Based on surveys conducted by inspectors of Illinois State and county agencies and by APHIS inspectors, we are removing from quarantine those areas in DuPage County and the Village of Summit. The last findings of ALB in these quarantined areas were December 2, 2000, and August 18, 1999, respectively.

Since then, no evidence of ALB infestation has been found in these areas. Based on our experience, we have determined that sufficient time has passed without finding additional beetles or other evidence of infestation to conclude that ALB constitutes a negligible risk to those areas in DuPage County and the Village of Summit. Therefore, we are removing the entries for these areas from the list of quarantined areas in § 301.51–3(c).

Immediate Action

This rulemaking is necessary on an immediate basis to help prevent the artificial spread of ALB to noninfested areas of the United States. This rule will also relieve restrictions on certain areas that are no longer warranted. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in consistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the integrated eradication program will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/es/alb.html.* Copies of the environmental assessment and finding of no significant impact are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this interim rule). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–3, paragraph (c), under the heading Illinois, the entry titled "Cook County" is revised to read as set forth below and the entries titled "DuPage County" and "Village of Summit" are removed.

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

Cook County. That area in the Ravenswood community in the City of Chicago that is bounded as follows: Beginning on the shoreline of Lake Michigan at Howard Street; then west on Howard Street to Western Avenue; then south on Western Avenue to Bryn Mawr Avenue; then west on Bryn Mawr Avenue to Central Park Avenue; then south on Central Park Avenue to Diversey Avenue; then east on Diversey Avenue to Diversey Parkway; then east on Diversey Parkway to Damen Avenue; then south on Damen Avenue to Chicago Avenue; then east on Chicago Avenue to the shoreline of Lake Michigan; then north along the shoreline of Lake Michigan to the point of beginning.

* * * * *

Done in Washington, DC, this 3rd day of March, 2004.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–5128 Filed 3–5–04; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of Foreign Margin Stocks (List) is composed of certain foreign equity securities that qualify as margin securities under Regulation T. The Foreign List has been published twice a year by the Board since 1999. The Board is removing all 51 stocks from the current List because they have not been recertified as required under procedures approved by the Board in 1990. The Board will publish a new List if eligible securities are identified pursuant to these listing procedures.

EFFECTIVE DATE: April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Stocks that appear on the List are by definition *foreign margin stocks* under Regulation T, making them also *margin securities* and therefore eligible for credit at brokers and dealers on the same basis as domestic margin securities. The List was last published on September 4, 2003 (68 FR 8993), and became effective September 15, 2003.

The List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the financial requirements of § 220.11(c) and (d). In determining the qualification of particular foreign equity securities, the Board has relied on a list of proposed foreign margin stocks submitted by the New York Stock Exchange (NYSE) based on certification of the securities' eligibility by at least two NYSE members under procedures adopted by the NYSE and approved by the Board in 1990. These procedures include periodic recertification of the stocks on the List by at least two NYSE member firms.

Foreign securities may also qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

The New York Stock Exchange has informed the Board that the member firms who usually recertify the stocks on the list have declined to do so, and plan to rely on the "ready market" test instead. The Board is therefore removing the 51 stocks on the current List because it is no longer able to determine that the securities substantially meet the provisions of section 220.11(d) of Regulation T, which is necessary for the securities' continued inclusion on the List.

The Board will publish a List in the future if it receives the required information under the approved procedures to establish the qualification of specific foreign equity securities pursuant to section 220.11(c) of Regulation T, which is necessary for initial inclusion on the List.

Public Comment

The Board finds that the requirements of 5 U.S.C. 553 with respect to notice and public participation are unnecessary. No additional useful information would be gained by public participation, given the objective character of the criteria for continued inclusion on the Foreign List specified in § 220.11(d) of Regulation T.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

■ Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, the Board is removing the following stocks from the Foreign List:

Akita Bank, Ltd., ¥50 par common
Aomori Bank, Ltd., ¥50 par common
Asatsu-DK Inc., ¥50 par common
Bank of Nagoya, Ltd., ¥50 par common
Chudenko Corp., ¥50 par common
Chugoku Bank, Ltd. ¥50 par common
Daihatsu Motor Co., Ltd., ¥50 par common
Dainippon Screen MFG. Co., Ltd., ¥50 par common
Denki Kagaku Kogyo, ¥50 par common
Eighteenth Bank, Ltd., ¥50 par common
Futaba Corp., ¥50 par common
Futaba Industrial Co., Ltd. ¥50 par common
Higo Bank, Ltd., ¥50 par common
Hitachi Software Engneering Co., Ltd., ¥50 par common
Hokkoku Bank, Ltd., ¥50 par common
Hokuetsu Paper Mills, Ltd., ¥50 par common
Iyo Bank, Ltd., ¥50 par common
Japan Airport Terminal Co., Ltd., ¥50 par common
Juroku Bank, Ltd., ¥50 par common
Kagoshima Bank, Ltd., ¥50 par common
Kamigumi Co., Ltd., ¥50 par common
Katokichi Co., Ltd., ¥50 par common
Keisei Electric Railway Co., Ltd., ¥50 par common
Keiyo Bank, Ltd., ¥50 par common
Komori Corp., ¥50 par common
Konami Co., Ltd., ¥50 par common
Michinoku Bank, Ltd., ¥50 par common
Musashino Bank, Ltd., ¥500 par common
Namco, Ltd., ¥50 par common
Nichicon Corp., ¥50 par common
Nihon Unisys, Ltd., ¥50 par common
Nishi-Nippon Bank, Ltd., ¥50 par common
Nishi-Nippon Railroad Co., Ltd., ¥50 par common
Nissan Chemical Industries, Ltd., ¥50 par common
Ogaki Kyoritsu Bank, Ltd., ¥50 par common
Q.P. Corp., ¥50 par common
Rinnai Corp., ¥50 par common
Sagami Railway Co., Ltd., ¥50 par common
Sakata Seed Corp., ¥50 par common
Santen Pharmaceutical Co., Ltd., ¥50 par common
Shimadzu Corp., ¥50 par common
Shimamura Co., Ltd., ¥50 par common

Sumitomo Rubber Industries, Ltd., ¥50 par common
Taiyo Yuden Co., Ltd., ¥50 par common
Takara Standard Co., Ltd., ¥50 par common
Toho Bank, Ltd., ¥50 par common
Toho Gas Co., Ltd., ¥50 par common
Tokyo Ohka Kogyo Co., Ltd., ¥50 par common
Uni-Charm Corp., ¥50 par common
Ushio, Inc., ¥50 par common
Yamaha Motor Co., Ltd., ¥50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), March 2, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–5103 Filed 3–5–04; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1185]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the El Paso check processing office of the Federal Reserve Bank of Dallas and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Dallas. These amendments reflect the restructuring of check processing operations within the Federal Reserve System.

DATES: The final rule will become effective on May 15, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for "local" checks are considered "nonlocal."

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the El Paso office of the Federal Reserve Bank of Dallas will cease processing checks on May 15, 2004. As of that date, banks with routing symbols currently assigned to the El Paso office for check processing purposes will be reassigned to the Dallas Reserve Bank's head office. As a result of this change, some checks that are drawn on and deposited at banks located in the El Paso and Dallas check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

The Board accordingly is amending the list of routing symbols assigned to Eleventh District check processing offices to reflect the transfer of operations from El Paso to Dallas and to assist banks in identifying local and nonlocal banks. These amendments are effective May 15, 2004, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, intends to issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the May 2003 **Federal Register** document.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendices are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of "check-processing region." Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the El Paso check processing office of the Federal Reserve Bank of Dallas and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Dallas. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already

[1] For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] See 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of final amendments, the Reserve Banks are striving to inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *www.frbservices.org*.

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The Eleventh Federal Reserve District routing symbol list in appendix A is revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Eleventh Federal Reserve District

[Federal Reserve Bank of Dallas]

Head Office

1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122
1123	3123
1163	3163

Houston Branch

1130	3130
1131	3131

San Antonio Branch

1140	3140
1149	3149

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, March 2, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–5050 Filed 3–5–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16147; Airspace Docket No. 03–AGL–17]

Modification of Class D Airspace; Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Rapid City, SD. Category E circling procedures have become necessary at Ellsworth AFB, Rapid City, SD. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approach procedures. This action increases the area of the existing controlled airspace at Ellsworth AFB, Rapid City, SD.

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, November 5, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Rapid City, SD (68 FR 62548). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Rapid City, SD, to accommodate aircraft executing instrument flight procedures into and out of Ellsworth AFB. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

AGL SD D Rapid City, SD [Revised]

Rapid City, Ellsworth AFB, SD
(Lat. 44°08′42″ N., long. 103°06′13″ W.)
Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long. 103°03′27″ W.)

That airspace extending upward from the surface to and including 5,800 feet MSL and within a 5.9-mile radius of Ellsworth AFB to the Rapid City Regional Airport 4.4-mile radius, excluding that airspace south of a line between the intersection of the Ellsworth AFB 4.7-mile radius and the Rapid City Regional Airport 4.4-mile radius. This Class D airspace is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time

will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois, on February 18, 2004.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–5175 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17147; Airspace Docket No. 04–ACE–13]

Modification of Class E Airspace; Excelsior Springs, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Excelsior Springs, MO. A review of controlled airspace for Excelsior Springs Memorial Airport identified noncompliance with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also revealed that the extension to this airspace area is no longer required. The extension is deleted and the area enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 16, 2004.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17147/Airspace Docket No. 04–ACE–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Excelsior Springs, MO. An examination of controlled airspace for Excelsior Springs Memorial Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The review also identified that the extension to the Excelsior Springs, MO Class E airspace area is no longer required and its existence is not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. This amendment expands the airspace area from a 6-mile radius to a 6.3-mile radius of Excelsior Springs Memorial Airport, revokes the Excelsior Springs, MO Class E airspace area extension, and brings the legal description of the Excelsior Springs, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17147/Airspace Docket No. 04–ACE–13." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Excelsior Springs, MO

Excelsior Springs Memorial Airport, MO
(Lat. 39°20′14″ N., long. 94°11′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Excelsior Springs Memorial Airport.

* * * * *

Issued in Kansas City, MO, on February 24, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5035 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–16070; Airspace Docket No. 03–ANM–05]

Establishment of Class E Airspace; Hamilton, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes Class E airspace at Hamilton, MT. New Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) have been developed at Ravalli County Airport, Hamilton, MT, making it necessary to establish this controlled airspace. Additional Class E airspace extending upward from 700 feet or more above the surface of the earth is needed for the safety of Instrument Flight Rules (IFR) aircraft executing these new SIAPs.

EFFECTIVE DATE: 0901 UTC June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 6, 2003, the FAA proposed to amend Federal Aviation Regulations 14 CFR part 71 to establish Class E airspace at Hamilton, MT (68 FR 62762). New RNAV GPS SIAPs at Ravalli County Airport, Hamilton, MT, made this proposal necessary. Additional airspace extending upward from 700 feet or more above the surface of the earth was added for the safety of IFR aircraft executing these new SIAPs.

Interested parties were invited to participated in this rule making proceeding by submitting written comments on the proposal to the FAA. One favorable comment was received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Ravalli County Airport, Hamilton, MT. Class E airspace extending upward from 700 feet or more above the surface of the earth is necessary to provide adequate controlled airspace for the safety of IFR aircraft executing these new RNAV GPS SIAPs.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ANM UT E5 Hamilton, MT [New]

Ravalli County Airport, MT
(Lat. 46°15′05″ N., long. 114°07′32″ W.)

That airspace extending upward from 700 feet above the surface of the earth within an 8 mile radius of Ravalli County Airport; that airspace extending upward from 1,200 feet above the surface of the earth bounded by a line beginning at lat. 46°42′00″ N., long. 114°11′00″ W.; to lat. 46°42′00″ N., long. 113°52′00″ W.; to lat. 46°19′30″ N., long. 113°52′00″ W.; to lat. 45°51′30″ N., long. 114°01′00″ W.; to lat. 45°51′30″ N., long. 114°11′00″ W.; to lat. 46°03′00″ N., long. 114°19′00″ W.; thence to the beginning; excluding that airspace within Federal Airways.

* * * * *

Issued in Seattle, Washington, on February 20, 2004.

Suzanne Alexander,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 04–5174 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16746; Airspace Docket No. 03–ACE–90]

Modification of Class E Airspace; Independence, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revised Class E airspace at Independence, IA.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1668). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 23, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5173 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16760; Airspace Docket No. 03–ACE–97]

Modification of Class E Airspace; Colby, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction; and confirmation of effective date.

SUMMARY: This document contains a correction to a direct final rule and confirms the effective date of the direct final rule which revises Class E airspace at Colby, KS.

DATES: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headdquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 04–492, published on Monday, January 12, 2004, (69 FR 1670) modified Class E airspace at Colby, KS. The modification enlarged the controlled airspace area around Shalz Field to provide proper protection of diverse departures, deleted the extension of controlled airspace and brought the Colby, KS Class E airspace area legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, Shalz Field was incorrectly spelled as Shaltz Field in the Colby, KS Class E airspace area legal description as published.

■ Accordingly, pursuant to the authority delegated to me, the Colby, KS Class E airspace, as published in the **Federal Register** on Monday, January 12, 2004, (69 FR 1670) [FR Doc. 04–492] is corrected as follows:

§ 71.1 [Corrected]

On page 1670, Column 2, fourth line from the bottom; Column 3, fourth, ninth and twenty-fifth lines from the bottom; and on page 1671, Column 2, second line from bottom, change "Shaltz Field" to read "Shalz Field."

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5172 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17148; Airspace Docket No. 04–ACE–14]

Modification of Class E Airspace; Festus, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Festus, MO. A review of controlled airspace for Festus Memorial Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Festus, MO Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 16, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17148/ Airspace Docket No. 04–ACE–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64016; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Festus, MO. An examination of controlled airspace for Festus Memorial Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The review also identified that the Festus, MO Class E airspace area legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The Class E airspace area extension should be defined in relation to the Festus nondirectional radio beacon (NDB). This amendment expands the airspace area from a 6-mile radius to a 6.2-mile radius of Festus Memorial Airport, adds the Festus NDB to the legal description, defines the Class E airspace area extension as it relates to the NDB and brings the legal description of the Festus, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. This Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17148/Airspace Docket No. 04–ACE–14." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Festus, MO

Festus Memorial Airport, MO
(Lat. 38°11'42" N., long. 90°23'08" W.)
Festus NDB
(Lat. 38°11'45" N., long. 90°23'15" W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Festus Memorial Airport and within 2.6 miles each side of the 178° bearing from the Festus NDB extending from the 6.2 mile radius of the airport to 7 miles south of the NDB.

* * * * *

Issued in Kansas City, MO, on February 26, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5171 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17149; Airspace Docket No. 04–ACE–15]

Modification of Class E Airspace; Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Fulton, MO. A review of controlled airspace for Elton Hensley Memorial Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Fulton, MO Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 19, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17149/ Airspace Docket No. 04–ACE–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Fulton, MO. An examination of controlled airspace for Elton Hensley Memorial Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also revealed discrepancies in the Elton Hensley Memorial Airport ARP used in the legal description for this airspace area. Additionally, the review identified that the Fulton, MO Class E airspace area extensions are not of appropriate dimensions per criteria set forth in FAA Order 8260.19C, Flight Procedures and Airspace. This amendment expands the airspace area from a 6-mile radius to a 6.3-mile radius of Elton Hensley Memorial Airport, incorporates the revised Elton Hensley Memorial Airport ARP into the legal description, decreases the length of the Class E airspace area extensions from 7.4 miles to 7 miles from the Guthrie nondirectional radio beacon (NDB) and brings the legal description of the Fulton, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17149/Airspace Docket No. 04–ACE–15." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Fulton, MO

Fulton, Elton Hensley Memorial Airport, MO
(Lat. 38°50′24″ N., long. 92°00′15″ W.)
Guthrie NDB
(Lat. 38°50′34″ N., long. 92°00′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Elton Hensley Memorial Airport and within 2.6 miles each side of the 069° bearing from the Guthrie NDB extending from the 6.3 mile radius of the airport to 7 miles northeast of the NDB and within 2.6 miles each side of 229° bearing from the NDB extending from the 6.3 mile radius of the airport to 7 miles southwest of the NDB.

* * * * *

Issued in Kansas City, MO, on February 26, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5170 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16762; Airspace Docket No. 03–ACE–99]

Modification of Class E Airspace; Marysville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Marysville, KS.

DATES: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1663) and subsequently published a correction to the direct final rule on February 3, 2004 (69 FR 5011). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5176 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16761; Airspace Docket No. 03–ACE–98]

Modification of Class E Airspace; Fort Scott, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Fort Scott, KS.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1666). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5177 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16759; Airspace Docket No. 03–ACE–96]

Modification of Class E Airspace; Clay Center, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Clay Center, KS.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal**

Register on January 12, 2004 (69 FR 1671). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 26, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5178 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16747; Airspace Docket No. 03–ACE–91]

Modification of Class E Airspace; Iowa Falls, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Iowa Falls, IA.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–502C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1662), and subsequently published a correction to the direct final rule on January 20, 2004 (69 FR 2816). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 23, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5179 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17143; Airspace Docket No. 04–ACE–9]

Modification of Class E Airspace; Iowa City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Iowa City, IA. The nondirectional radio beacon (NDB) navigation aid associated with Iowa City Municipal Airport has been decommissioned. Standard instrument approach procedures (SIAPs) utilizing the NDB are cancelled effective April 15, 2004. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodates these SIAPs will no longer be needed.

The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Iowa City, IA, to delete the Hawkeye NDB and coordinates from the Iowa City, IA Class E airspace area legal description and to bring the area into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004.

Comments for inclusion in the Rules Docket must be received on or before April 14, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17143/ Airspace Docket No. 04–ACE–9, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 17 revises the Class E airspace at Iowa City, IA. The Hawkeye NDB has been decommissioned. NDB Runway (RWY) 30 SIAP and NDB or Global Positioning System (GPS)–A SIAP that serve Iowa City Municipal Airport are cancelled effective April 15, 2004. Controlled airspace extending upward from 700 feet AGL that accommodates these SIAPs will no longer be needed. The amendment to Class E airspace at Iowa City, IA provides controlled airspace at and above 700 feet AGL to contain the remaining SIAPs that serve Iowa City Municipal Airport. The additional Class E airspace necessary for the NDB or GPS–A SIAP is revoked. The Hawkeye NDB and coordinates, and reference to these, are deleted from the legal description of Iowa City, IA Class E5 airspace. These actions bring the Iowa City, IA Class E airspace into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in

adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–17143/Airspace Docket No. 04–ACE–9." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Iowa City, IA

Iowa City Municipal Airport, IA
(Lat. 41 °38′21″ N., long. 91°32′47″ W.)
Iowa City VORTAC
(Lat. 41°31′08″ N., long. 91°36′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Iowa City Municipal Airport and within 1.8 miles each side of the Iowa City VORTAC 024° radial extending from the 6.5 mile radius of the airport to the VORTAC.

* * * * *

Issued in Kansas City, MO on February 24, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5180 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16748; Airspace Docket No. 03–ACE–92]

Modification of Class E Airspace; Anthony, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Anthony, KS.

DATES: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1664), and subsequently published a correction to the direct final rule in the **Federal Register** on January 20, 2004 (69 FR 2816). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 23, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5181 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16749; Airspace Docket No. 03–ACE–93]

Modification of Class E Airspace; Beloit, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Beloit, KS.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 12, 2004 (69 FR 1661), and subsequently published a correction to the direct final rule in the **Federal Register** on February 3, 2004 (69 FR 5012). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 23, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5182 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16408; Airspace Docket No. 03–ACE–76]

Modification of Class E Airspace; Plattsmouth, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Plattsmouth, NE.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 6, 2004 (69 FR 495) and subsequently published a correction to the direct final rule in the **Federal Register** on January 12, 2004 (69 FR 1783). The FAA uses the direct final rule making procedure for a non-controversial rule where the FAA believes that here will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on February 23, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–5183 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30407; Amdt. No. 447]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or

circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on March 2, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, April 15, 2004.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 447; Effective Date April 15, 2004]

From	To	MEA
§ 95.6001 Victor Routes-U.S.		
§ 95.6070 VOR Federal Airway 70 Is Amended to Read in Part		
Wilmington, NC VORTAC	Beula, NC FIX	5,000
§ 95.6195 VOR Federal Airway 195 Is Amended to Read in Part		
Tomad, CA FIX *7,700—MCA Yager FIX E BND. **7,900—MOCA.	*Yager, CA FIX	**9,500
§ 95.6210 VOR Federal Airway 210 Is Amended to Read in Part		
Spery, PA FIX *2,200—MOCA.	Propp, PA FIX	*3,000
§ 95.6213 VOR Federal Airway 213 Is Amended to Read in Part		
Wilmington, NC VORTAC *3,000—MOCA.	Wallo, NC FIX	*5,000
§ 95.6296 VOR Federal Airway 296 Is Amended to Read in Part		
Rapvy, NC FIX *3,000—MOCA.	Wilmington, NC VORTAC	*5,000
§ 95.6136 VOR Federal Airway 307 Is Amended to Delete		
US Canadian Border	Ann, AK VORTAC	5000
§ 95.6136 VOR Federal Airway 362 Is Amended to Delete		
US Canadian Border 4900*MOCA.	Ann, AK VORTAC	5000

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V–165 Is Amended to Add Changeover Point			
Deschutes, OR VORTAC	Newberg, OR VOR/DME	43	Deschutes, OR VORTAC

[FR Doc. 04–5152 Filed 3–5–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30406; Amdt. No. 3091]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 8, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 8, 2004.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (air).

Issued in Washington, DC, on February 27, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective April 15, 2004*

Orlando, FL, Executive, RNAV (GPS) RWY 7, Orig-A
Orlando, FL, Executive, RNAV (GPS) RWY 25, Orig-A
Orlando, FL, Executive, ILS OR LOC RWY 7, Amdt 22A
Orlando, FL, Executive, VOR/DME RWY 7, Amdt 1A
Orlando, FL, Executive, VOR/DME RWY 25, Amdt 2A
Orlando, FL, Executive, LOC BC RWY 25, Amdt 21A
Orlando, FL, Executive, NDB RWY 7, Amdt 16A
Eunice, LA, Eunice, NDB RWY 16, Amdt 1
Albert Lea, MN, Albert Lea Muni, VOR/DME RWY 34, Orig
Albert Lea, MN, Albert Lea Muni, VOR RWY 16, Orig
Albert Lea, MN, Albert Lea Muni, RNAV (GPS) RWY 16, Orig
Albert Lea, MN, Albert Lea Muni, RNAV (GPS) RWY 34, Orig
Albert Lea, MN, Albert Lea Muni, VOR/DME OR GPS RWY 34, Amdt 2B, CANCELLED
Albert Lea, MN, Albert Lea Muni, VOR OR GPS RWY 16, Amdt 9B, CANCELLED
Los Alamos, NM, Los Alamos, RNAV (GPS) RWY 27, Orig
Tahlequah, OK, Tahlequah Muni, NDB RWY 17, Amdt 2
Alice, TX, Alice Intl, RNAV (GPS) RWY 13, Orig
Alice, TX, Alice Intl, RNAV (GPS) RWY 31, Orig
Alice, TX, Alice Intl, VOR–A, Amdt 15
Alice, TX, Alice Intl, VOR RWY 31, Amdt 13
Alice, TX, Alice Intl, GPS RWY 13, Orig, CANCELLED
Alice, TX, Alice Intl, GPS RWY 31, Amdt 1, CANCELLED

* * * *Effective May 13, 2004*

Wilmington, OH, Clinton Field, VOR–A, Amdt 1A
Zanesville, OH, Zanesville Muni, ILS OR LOC/DME RWY 22, Orig-A
Madison, WI, Dane County Regional-Truax Field, VOR/DME OR TACAN RWY 18, Amdt 1

The FAA published an Amendment in Docket No. 30405, Amdt No. 3090 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 38, Page 8811; dated February 26, 2004) under § 97.33 effective 15 April 2004, which is hereby rescinded:

Minot, ND, Minot Intl, LOC BC RWY 13, Amdt 7

[FR Doc. 04–5027 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket Nos. 1994N–0418 and 1996P–0276]

Medical Devices: Cardiovascular Devices: Reclassification of the Arrhythmia Detector and Alarm; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of October 28, 2003 (68 FR 61342). That document issued a final rule reclassifying arrhythmia detector and alarm devices from class III to class II (special controls). This device is used to monitor an electrocardiogram (ECG) and to produce a visible or audible signal or alarm when an atria or ventricular arrhythmia occurs. The document published with an inadvertent error. This document corrects that error.

EFFECTIVE DATE: March 8, 2004

FOR FURTHER INFORMATION CONTACT: Elias Mallis, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–441–8571, ext. 177.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–27115, appearing on page 61342 in the **Federal Register** of Tuesday, October 28, 2003, the following correction is made:

§ 870.5310 [Corrected]

■ On page 61344, in the first column, in § 870.5310 *Automated external defibrillator,* beginning in the seventh line, the parenthetical "(restoring normal hearth rhythm)" is corrected to read "(restoring normal heart rhythm)."

Dated: February 26, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–5045 Filed 3–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–041]

RIN 1625–AA–09

Drawbridge Operation Regulations; Albemarle and Chesapeake Canal, AICW, Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the new S168 (Great Bridge) lift-span bridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway (AICW) mile 12.0, at Chesapeake, Virginia to allow the bridge owner to conduct the demolition of the existing S168 (Great Bridge) swing-span bridge. The work will be performed on a three-day closure period to navigation.

DATES: This deviation is effective from 7 a.m. on March 3, 2004, to 7 a.m. on March 7, 2004.

FOR FURTHER INFORMATION CONTACT: Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: Tidewater Skanska Corporation (TSC), on behalf of the bridge owner (U.S. Army Corps of Engineers), has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.997(g) which requires the drawbridge to open on signal, except that, from 6 a.m. to 7 p.m., the draw need be opened only on the hour. If any vessel is approaching the bridge and cannot reach the draw exactly on the hour, the draw tender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching vessel and any other vessels that are waiting to pass. Vessels in an emergency condition, which presents danger to life or property, shall be passed at any time. TSC has requested the temporary deviation to close the new S168 (Great Bridge) lift-span bridge to navigation to demolish the existing S168 (Great Bridge) swing-span bridge.

The work involves the removal and disposal of the existing swing spans and turntable piers associated with the existing S168 (Great Bridge) swing-span bridge. To facilitate this work, the new S168 (Great Bridge) lift-span bridge will be locked in the closed-to-navigation

position on a three-day closure period from 7 a.m. to 7 a.m., from March 3–7, 2004. During this period, the work requires completely immobilizing the operation of the lift span in the closed-to-navigation position. At all other times, the new bridge will operate in accordance with the current operating regulations outlined in 33 CFR 117.997(g). Calling the project superintendent at (757) 672–4829 will provide for emergency opening requests.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The District Commander has granted temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. The temporary deviation allows the S168 (Great Bridge) lift-span bridge across the Albemarle and Chesapeake Canal, AICW, mile 12.0, at Chesapeake, Virginia, to remain closed to navigation on a three-day closure period from March 3–7, 2004, from 7 a.m. to 7 a.m.

Dated: March 1, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. 04–5099 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP PHILADELPHIA 03–007]

RIN 1625–AA00

Security Zone; Three Mile Island Generating Station, Susquehanna River, Dauphin County, Pennsylvania

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is continuing the effective period of the temporary security zone on the waters adjacent to the Three Mile Island Generating Station. This will protect the safety and security of the plants from subversive activity, sabotage, or terrorist attacks initiated from surrounding waters. This action will close water areas around the plants.

DATES: Effective February 25, 2004, § 165.T05–093, originally added at 68 FR 33399, June 4, 2003, effective from 5 p.m. e.d.t. on May 13, 2003, to 5 p.m. e.s.t. on January 24, 2004; and reinstated and extended at 69 FR 6156, February 10, 2004, effective January 16, 2004, through 11:59 p.m. (e.s.t.) on February 29, 2004, is reinstated and is effective through July 31, 2004.

ADDRESSES: Documents as indicated in this preamble are available as part of docket COTP PHILADELPHIA 03–007 for inspection or copying at Coast Guard Marine Safety Office Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania, 19147, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Kevin Sligh or Ensign Jill Munsch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this regulation effective less than 30 days after publication in the **Federal Register**. Based upon the warnings from national security and intelligence personnel, this rule is urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from the waters surrounding the plants.

Delaying the effective date of the rule would be contrary to the public interest, since immediate action is needed to protect the persons at the facilities, the public and surrounding communities from the release of nuclear radiation. This security zone should have minimal impact on vessel transits because the security zone does not block the channel.

It took longer to resolve issues related to our proposed rule to created a permanent zone (68 FR 54177, September 16, 2003) than was expected at the time the last temporary final rule was issued, and new issues have since been discovered. This new temporary final rule is necessary because it would be contrary to public interest not to maintain a temporary safety and security zone until the final rule becomes effective.

Background and Purpose

Due to the continued warnings from national security and intelligence officials that future terrorist attacks are possible, such as those launched against New York and Washington, DC, on September 11, 2001, heightened security measures are necessary for the area surrounding the Three Mile Island Generating Station. This rule will provide the Captain of the Port Philadelphia with enforcement options to deal with potential threats to the security of the plants.

The Coast Guard intends to implement a permanent security zone surrounding the plants. The Coast Guard will use the effective period of this temporary final rule to complete its rulemaking started with our September 16, 2003, publication of a notice of proposed rulemaking (NPRM) in the **Federal Register** (68 FR 54177) to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Philadelphia, Pennsylvania zone.

Currently, the need for this security zone still exists. The extension of the security zone through the end of July 2004, will allow the Coast Guard time to establish a Memorandum of Understanding with civilian authorities and to publish a NPRM in the **Federal Register** without an interruption in the protection provided by the security zone.

Discussion of Rule

This temporary rule will extend the effective period of the security zone from 11:59 p.m. (e.s.t.) on February 29, 2004, through July 31, 2004. The size of the zone remains unchanged. No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Philadelphia, Pennsylvania or designated representative. Federal, State, and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The primary impact of this rule will be on vessels wishing to transit the affected waterway. Although this rule restricts traffic from freely transiting portions of the Susquehanna River, that restriction affects only a limited area and will be well publicized to allow mariners to make alternative plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: owners or operators of fishing vessels and recreational vessels wishing to transit the portions of the Susquehanna River.

The rule will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions affect only a limited area and traffic will be allowed to transit through the zone with permission of the Coast Guard or designated representative. The opportunity to engage in recreational and charter fishing outside the geographical limits of the security zone will not be disrupted. Therefore, this regulation should have a negligible impact on recreational and charter fishing activity.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to security that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f) and (g), of Commandant Instruction M16475.1D, from further environmental documentation.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Temporary § 165.T05–093 is reinstated and revised to read as follows:

§ 165.T05–093 Security Zone; Three Mile Island Generating Station, Susquehanna River, York County, Pennsylvania.

(a) *Location.* The following area is a security zone: the waters of the Susquehanna River in the vicinity of the Three Mile Island Generating Station bounded by a line drawn from a point located at 40°09′14.74″ N, 076°43′40.77″ W to 40°09′14.74″ N, 076°43′42.22″ W, thence to 40°09′16.67″ N, 076°43′42.22″

W, thence to 40°09′16.67″ N, 076°43′40.77″ W. All coordinates reference Datum: NAD 1983.

(b) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in § 165.33 of this part.

(2) No person or vessel may enter or navigate within this security zone unless authorized to do so by the Coast Guard or designated representative. Any person or vessel authorized to enter the security zone must operate in strict conformance with any directions given by the Coast Guard or designated representative and leave the security zone immediately if the Coast Guard or designated representative so orders.

(3) The Coast Guard or designated representative enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (215) 271–4807.

(4) The Captain of the Port will notify the public of any changes in the status of this security zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(c) *Definitions.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act as a designated representative on his behalf.

(d) *Effective period.* This section is effective from 5 p.m. (e.d.t.) on May 13, 2003, through July 31, 2004.

Dated: February 25, 2004.

Jonathan D. Sarubbi,

Captain, U.S. Coast Guard, Captain of the Port Philadelphia.

[FR Doc. 04–5153 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AL85

Delegation of Authority—Property Management Contractor

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its delegation of authority regulation with respect to the loan guaranty program. This amendment will permit certain officers of the private contractor performing property management functions to execute all documents necessary for the management and sale of single-family properties acquired by VA under its housing loan guaranty program. This amendment will provide notice to buyers, lenders, and other real estate professionals of the contractor's authority to sign these documents rather than requiring VA to prepare and record powers of attorney, thereby increasing the efficiency of the loan guaranty program.

DATES: *Effective Date:* March 8, 2004.

FOR FURTHER INFORMATION CONTACT: William W. Lutes, Assistant Director for Property Management and Strategic Development (263), Veterans Benefits Administration, 810 Vermont Ave., Washington, DC 20420, telephone 202–273–7379.

SUPPLEMENTARY INFORMATION: The provisions of 38 U.S.C. chapter 37 authorize the Secretary of Veterans Affairs (VA) to guarantee or make loans to veterans. Following the termination of loans which have been in serious default, the holder of the guaranteed loan may, pursuant to 38 U.S.C. 3732(c), have an election to convey to the Secretary the property which had secured the loan. Upon receipt of these properties, VA sells them to the general public in order to reduce the loss to the Federal Treasury on the guaranteed loan. The sale of such properties is not a benefit to veterans.

VA has contracted with a private entity to handle the management and resale of its inventory of acquired properties. In order to increase the efficiency of this contract, certain officers of the contractor are being delegated authority to execute, on behalf of VA, routine documents necessary for the management and sale of these properties.

Currently, 38 CFR 36.4342 authorizes certain VA officials, such as field station Directors, Loan Guaranty Officers, and Assistant Loan Guaranty Officers, to execute these documents. Regional Offices are required to maintain a cumulative list of all employees of that office who have held the designated positions since May 1, 1980. In addition, 38 CFR 36.4342(e) authorizes certain officers of the private contractor servicing loans made or acquired by VA to execute on behalf of the Secretary all documents necessary for the servicing and termination of those loans. VA also maintains a log of the corporate officers who have been authorized to execute these documents.

This rule adds a new paragraph (f) to 38 CFR 36.4342 which delegates to persons holding the office of Senior Vice President, Vice President, Assistant Vice President, Assistant Secretary, Director, and Senior Manager of the entity performing property management and sales functions under a contract with VA the authority to execute all documents necessary for the management and sale of residential real property acquired by VA under the housing loan program authorized by 38 U.S.C. chapter 37. Documents authorized to be executed will include sales contracts, deeds, documents relating to removing adverse occupants, and any documents relating to sales closings. The authorization to execute deeds is limited to deeds other than general warranty deeds.

The Director of the VA Loan Guaranty Service, Washington, DC, will maintain a log listing all corporate officers of the contractor who have been authorized to execute documents and the dates during which these persons were authorized to act. VA will also maintain copies of resolutions of the contractor's board of directors authorizing these persons to execute these documents. Those files will be available for public inspection and copying during normal business hours at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

The provisions of 38 CFR 36.4342(f) are published without regard to the notice and comment and delayed effective date provisions of 5 U.S.C. 553 since they relate to agency management and personnel and are not substantive rules.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule relates to agency management and personnel and does not contain substantive provisions affecting small

entities. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this program.

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs, Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: February 24, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

■ 1. The authority citation of part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

■ 2. Section 36.4342 is amended by:

■ a. Adding paragraph (f) immediately after paragraph (e).

■ b. Removing the second authority citation that appears at the end of the section.

The addition reads as follows:

§ 36.4342 Delegation of authority.

* * * * *

(f)(1) Authority is hereby delegated to the officers, designated in paragraph (f)(2) of this section, of the entity performing property management and sales functions under a contract with the Secretary to execute on behalf of the Secretary all documents necessary for the management and sales of residential real property acquired by the Secretary pursuant to 38 U.S.C. chapter 37. Documents executed under this paragraph include but are not limited to: sales contracts, deeds, documents relating to removing adverse occupants, and any documents relating to sales closings. The authorization to execute deeds is limited to deeds other than general warranty deeds.

(2) The designated officers are: Senior Vice President, Vice President, Assistant Vice President, Assistant Secretary, Director, and Senior Manager.

(3) The Director, Loan Guaranty Service, Washington, DC, shall maintain a log listing all persons authorized to execute documents pursuant to paragraph (f) of this section and the dates such persons held such authority, together with certified copies of resolutions of the board of directors of the entity authorizing such individuals to perform the functions specified in paragraph (f)(1) of this section. These records shall be available for public inspection and copying at the Office of the Director of VA Loan Guaranty Service, Washington, DC 20420.

* * * * *

(Authority: 38 U.S.C. 501, 3720(a)(5))

[FR Doc. 04–5108 Filed 3–5–04; 8:45 am]

BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 212

[CIS No. 2255–03]

RIN 1615–AA91

Implementation of the Agreement Between the Government of the United States of America and the Government of Canada Regarding Asylum Claims Made in Transit and at Land Border Ports-of-Entry

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: On March 1, 2003, the Immigration and Naturalization Service transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (Public Law 107–296). The responsibility for administering the asylum program was transferred to U.S. Citizenship and Immigration Services ("USCIS") within DHS. The terms of a recently signed agreement between the United States and Canada bar certain categories of aliens arriving from Canada at land border ports-of-entry and in transit from Canada from applying for protection in the United States. This proposed rule would establish USCIS asylum officers' authority to make threshold determinations concerning applicability of the Agreement in the expedited removal context.

DATES: Written comments must be submitted on or before May 7, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference CIS No. 2255–03 on your correspondence. You may also submit comments electronically to USCIS at *rfs.regs@dhs.gov*. When submitting comments electronically, you must include CIS No. 2255–03 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Joanna Ruppel, Deputy Director, Asylum Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave., NW., Third Floor, Washington, DC 20536, telephone number (202) 305–2663.

SUPPLEMENTARY INFORMATION:

What Legal Authority Permits USCIS To Use a Safe Third Country Agreement as a Bar To Applying for Asylum?

Section 208(a)(1) of the Immigration and Nationality Act ("Act") permits any alien who is physically present in or who arrives at the United States to apply for asylum. However, section 208(a)(2)(A) of the Act specifically states that paragraph (1) shall not apply where, "pursuant to a bilateral or multilateral agreement, the alien may be removed to a country where the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General [now deemed to be the Secretary of Homeland Security under the Homeland Security Act] finds that it is in the public interest for the alien to receive asylum in the United States."

On December 5th, 2002, the governments of the United States and Canada signed the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries ("Safe Third Country Agreement" or "Agreement"). The Agreement will take effect when the United States has promulgated implementing regulations and Canada has completed its own domestic procedures necessary to bring the Agreement into force. This Agreement will be implemented by USCIS asylum officer determinations.

The Agreement allocates responsibility between the United States and Canada whereby one country or the other (but not both) will assume responsibility for processing the claims of certain asylum seekers who are traveling from Canada into the United States or from the United States into Canada. The Agreement provides for a threshold determination to be made concerning which country will consider the merits of an alien's protection claim, enhancing the two nations' ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. This Safe Third Country Agreement between the United States and Canada currently constitutes the only agreement, for purposes of section 208(a)(2)(A) of the Act, that would bar an individual in or arriving at the United States from applying for asylum.

During the bilateral negotiations that have resulted in the Safe Third Country Agreement, the delegations of both countries acknowledged certain differences in their respective asylum systems. However, harmonization of asylum laws and procedures is not a prerequisite to entering into responsibility-sharing arrangements. The salient factor is whether the countries sharing responsibility for refugee protection have laws and mechanisms in place that adhere to their international obligations to protect refugees. The Executive Committee for the Office of the United Nations High Commissioner for Refugees (UNHCR) has concluded, "Overall it is UNHCR's position that, while in principle each State Party to the 1951 Convention and 1967 Protocol has a responsibility to examine refugee claims made to it, "burden-sharing" arrangements allowing for readmission and determination of status elsewhere are reasonable, provided they always ensure protection of refugees and solutions to their problems." Background Note on the Safe Country Concept and Refugee Status (EC/SCP/68), July 26, 1991. While the asylum systems in Canada and the U.S. are not identical, both country's asylum systems meet and exceed international standards and obligations under the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) and the 1967 Protocol relating to the Status of Refugees (1967 Protocol), and the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture).

What Are the Terms of the Safe Third Country Agreement Between the United States and Canada?

The Agreement permits the United States to remove to Canada certain asylum seekers attempting to enter the United States from Canada at a land border port-of-entry and aliens who are being removed from Canada in transit through the United States. Similarly, it permits Canada to return to the United States certain asylum seekers attempting to enter Canada from the United States at a land border port-of-entry and certain aliens being removed from the United States through Canada. In either case, the Agreement provides (with certain exceptions) that the alien be returned to the "country of last presence" for consideration of his or her protection claims, including asylum, withholding of removal, and protection under the Convention Against Torture, under the laws of that country.

For aliens arriving at a land border port-of-entry, the Agreement provides for a number of exceptions. These exceptions are based upon the principles underlying the U.S. position while negotiating the Agreement: (1) To the extent practicable, the Agreement should not act to separate families; (2) the Agreement must guarantee that persons subject to it would have their protection claims adjudicated in one of the two countries; and (3) it would be applied only in circumstances where it is indisputable that the alien arrived directly from the other country. These principles have been achieved by including a robust family unity exception that allows asylum seekers to join certain family members residing in the United States or Canada while they pursue their protection claims; by clearly stipulating that the alien must have his or her claim adjudicated in either Canada or the United States; and by limiting the application of the Agreement to situations where it is clear that the alien arrived directly from the other country; *e.g.*, at land border ports-of-entry or in-transit while being removed from Canada.

The Agreement's family unity exceptions are particularly generous. The range of family members who may qualify as "anchor" relatives due to their presence in the United States is far broader than those recognized under other provisions of immigration law. The list of eligible family members includes spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews. For purposes of the Agreement, a "legal guardian" will be construed as someone who is currently vested with legal custody of the asylum seeker or with the authority to act on behalf of the asylum seeker, provided that the asylum seeker is both unmarried and less than 18 years of age. USCIS will provide field guidance to asylum officers to standardize the approach used in construing other family member relationships relevant to the Agreement but not defined in the Act. Finally, these family members may qualify as anchor relatives even if they themselves do not possess permanent immigration status in the U.S. Aliens in valid immigrant or nonimmigrant status may qualify as anchor relatives, with the exception of aliens who maintain only nonimmigrant visitor status under section 101(a)(15)(B) of the Act or based on admission under the Visa Waiver Program, who are precluded from serving as anchor relatives by the language of the Agreement.

More specifically, an alien who arrives at a land border port-of-entry is exempt from return under the Agreement if the alien:

(1) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

(2) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, except visitor status;

(3) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending in the United States;

(4) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

(5) Is applying for admission at a United States land border port-of-entry with a validly issued visa or other valid admission document, other than for transit, issued by the United States, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

(6) Has been permitted, as an unreviewable exercise of discretion by DHS, to pursue a protection claim in the United States because it was determined that it is in the public interest to do so.

The specific terms of the Safe Third Country Agreement are available on the USCIS Web site at *http://www.uscis.gov.*

How Does This Rule Propose To Implement the Safe Third Country Agreement?

The rule proposes to revise § 208.4 and add a new § 208.30(e)(6) to permit asylum officers to conduct a "threshold screening interview" in order to determine whether an alien is ineligible to apply for asylum under section 208(a)(2)(A) of the Act by operation of the Safe Third Country Agreement. New § 208.30(e)(6)(iii) would codify the exceptions to the Agreement. Under this rule, in any case where an asylum officer determines that the alien qualifies for an exception to the Agreement with Canada, the asylum officer will proceed immediately to a determination as to whether or not the alien has a credible fear of persecution or torture, as provided under existing law.

In § 208.30(e)(6)(i), this proposed rule also makes clear that, when an asylum officer determines that an alien is ineligible to pursue his or her protection claims in the United States based on the applicability of the Safe Third Country Agreement, the alien will be removed to Canada, the country of the alien's last presence, in order to pursue his or her claims there.

The rule also proposes to incorporate the existing definitions of "credible fear of persecution" and "credible fear of torture" in the new §§ 208.30(e)(2) and (e)(3). The definition of credible fear of persecution, derived from section 235(b)(1)(B)(v) of the Act and existing policy that incorporates consideration of eligibility for withholding of removal, is "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act." The proposed rule incorporates the existing definition of credible fear of torture provided in the supplementary information to the interim rule implementing the United States' obligations under the Convention Against Torture published in the **Federal Register** at 64 FR 8484 on February 19, 1999. Under current procedures, as provided in the supplementary information to the interim rule, an alien is found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture. The rule does not propose to

alter current procedures related to these existing definitions.

Finally, this rule proposes to remove the provisions of 8 CFR 208.30(g)(2) relating to the conduct of credible fear review by immigration judges. In view of the transfer of the responsibilities of the former INS to DHS on March 1, 2003, the Attorney General published a rule creating a new chapter V in 8 CFR, beginning with part 1001 and containing the regulations pertaining to the functions of the Executive Office for Immigration Review (EOIR), which remains under the authority of Attorney General. The Attorney General's rule was published in the **Federal Register** at 68 FR 9824 on February 28, 2003. Accordingly, this rule revises § 208.30(g)(2) to remove the previous provisions and to substitute a new cross-reference to the current EOIR regulations which are now codified at 8 CFR 1208.30(g)(2).

Why Is USCIS Proposing To Amend the Regulations Governing Credible Fear Determinations?

The Safe Third Country Agreement between the United States and Canada bars certain aliens from pursuing protection claims in the United States if they are either arriving from Canada at land border ports-of-entry or are being removed from Canada in transit through the United States. Instead, those aliens will be returned to Canada to have their protection claims adjudicated by Canada. In general, the Agreement will be applied to such aliens who are subject to expedited removal provisions under section 235(b) of the Act, which provides a specific removal mechanism for aliens who are inadmissible under sections 212(a)(6)(C) (fraud or willful misrepresentation) or 212(a)(7) (failure to have proper documents) of the Act. However, in light of the Safe Third Country Agreement's purpose in allowing asylum seekers access to only one of the signatory countries' protection systems, this rule proposes a modified approach to the expedited removal process in the form of a threshold asylum officer screening as to which country (Canada or the United States) will consider an alien's protection claims. Only after this threshold issue has been resolved in favor of allowing the alien to pursue an asylum claim in the United States will an asylum officer make a determination as to whether or not the alien has a credible fear of persecution or torture.

Under section 235(b), aliens subject to expedited removal who seek asylum in the United States or otherwise express a fear of persecution or torture are referred to an asylum officer. During a "credible fear interview," the asylum officer inquires as to the nature and basis of the alien's claims relating to past persecution and fear of future persecution or torture. The asylum officer then determines whether or not there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claims and other facts known to the officer, that the alien could establish eligibility for protection under U.S. law. In the event that the asylum officer determines that the alien has not established a credible fear of persecution or torture, the alien may request review of that determination by an immigration judge.

For aliens who are subject to the Agreement, however, the threshold question is whether the alien should be returned to Canada for Canadian authorities to consider the merits of the alien's claims, or whether the alien will instead be allowed to pursue his or her protection claims in the United States. Accordingly, this rule provides for a threshold screening interview by an asylum officer to determine whether an alien subject to the Agreement will be permitted to remain in the U.S. to pursue his or her protection claims, based on the alien's qualification for one of the Agreement's exceptions. It is only after this threshold screening interview (*i.e.*, only after the asylum officer has decided that the alien is not going to be removed to Canada for an adjudication of the alien's claims) that the asylum officer would proceed to promptly consider the alien's claims for protection under United States law through the credible fear determination process. The asylum officer's notes regarding the threshold issues raised by the Agreement would then be included in the asylum officer's written record of the credible fear determination. In those instances where an asylum officer determines, after review by a supervisory asylum officer, that the alien has not provided reason to believe, by a preponderance of the evidence, that he or she qualifies for any of the Agreement's exceptions, then the asylum officer will advise the alien that he or she is being returned to Canada based on the terms of the Agreement so that the alien will be able to pursue his or her claims for asylum or protection under Canadian law.

Given the narrowness of the factual issues relevant to the threshold screening determination that the Agreement and/or its exceptions are applicable to an alien, which can readily be considered and adjudicated by asylum officers, this rule does not provide for referral to immigration judges for further review of these threshold screening determinations. The narrow factual issues concerning the Agreement's applicability and exceptions (such as the presence of family members in the U.S. or the possession of validly issued visas) do not relate to whether an alien has a fear of persecution or torture, and can adequately be resolved by asylum officers. Thus, under this proposed rule, when an asylum officer makes and a supervisor reviews this threshold determination, there would be no further administrative review of that decision. Elsewhere in the **Federal Register**, the Department of Justice is publishing a proposed rule to specify the authority of the immigration judges with respect to issues arising under the Agreement.

This method for implementing the Safe Third Country Agreement, which bars certain aliens from applying for asylum in the United States, is within the authority of the Secretary of DHS, under section 208(a)(2)(A) of the Act and under section 208(d)(5)(B) of the Act, which provides authority to impose regulatory conditions or limitations on the consideration of an application for asylum not inconsistent with the Act. Section 208(a)(2)(A) of the Act makes an alien ineligible to apply for asylum in the United States if, pursuant to a bilateral agreement, the Secretary concludes that the alien "would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection" in a safe third country. An alien who is covered by section 208(a)(2)(A) is thus not eligible to apply for asylum regardless of the statutory means by which he is ordered removed from the United States. By this rule, the Secretary is proposing, in a manner consistent with the Act, to delegate to asylum officers the authority to make the threshold determination whether an alien is ineligible to apply for asylum by operation of the Agreement with Canada.

USCIS thus proposes to amend the regulations governing the credible fear determination in order to implement the threshold screening process described above for aliens subject to the Safe Third Country Agreement, prior to a credible fear determination. However, this rule preserves unchanged the existing credible fear process itself, including the availability of a credible fear review by an immigration judge, in every case where the asylum officer determines that an alien subject to the Agreement does satisfy any of the threshold jurisdictional exceptions, including a discretionary decision by

DHS to allow the alien to pursue an asylum claim as a matter in the public interest. If the asylum officer determines the alien is not barred by the Agreement from pursuing his or her protection claims in the U.S., the asylum officer will then proceed immediately to a credible fear determination on the merits of the alien's claims, and, if necessary, an immigration judge will conduct a review of this determination on the merits, as provided under existing law and regulations.

How Does This Rule or the Safe Third Country Agreement Affect Unaccompanied Minors?

In order to understand how this rule affects unaccompanied minors, it is important to understand that the definition of an "unaccompanied minor" customarily used in determining appropriate immigration processes is different than the definition used in the Agreement for determining whether an exception to the Agreement applies. While "unaccompanied minor" has not been formally defined in the Act or in regulations, for immigration processing purposes, an individual who is under age 18 and is not accompanied by an adult relative or guardian is considered an "unaccompanied minor." This definition differs from the Agreement's language. Article 1(f) of the Agreement defines "unaccompanied minor" as "an unmarried refugee status claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States." This rule does not propose replacing the customary definition of "unaccompanied minor" with the Agreement's definition for purposes of determining immigration issues unrelated to the Agreement. However, in applying the Agreement, this difference in definitions will result in finding that some individuals under age 18 who are not accompanied by an adult relative or legal guardian when they arrive at a land border port-of-entry will not qualify for the unaccompanied minor exception in the Agreement, because they have a parent or legal guardian in the United States or Canada.

Since August of 1997, the Immigration and Naturalization Service's policy, now DHS's policy, has been to place unaccompanied minors into expedited removal proceedings only under limited circumstances. Under existing policy, an unaccompanied minor would be placed into expedited removal proceedings only if he or she (1) in the presence of a DHS immigration officer, engaged in a crime that would qualify as an aggravated felony if committed by an adult; (2) has been convicted or adjudicated delinquent of an aggravated felony in the United States or any other country, and a U.S. Customs and Border Protection (CBP) officer has confirmation of that order; or (3) has been formally removed, excluded, or deported previously from the United States. Existing guidelines permit granting a waiver, deferring the inspection, permitting a withdrawal of the application for admission, or using other discretionary means to process unaccompanied minors who seek admission to the United States, where appropriate. This rule does not propose to change that existing policy. The Safe Third Country Agreement will be applied in the expedited removal proceedings of unaccompanied minors only when such other processing of an unaccompanied minor seeking admission at a land border port-of-entry is not appropriate. When an unaccompanied minor arrives from Canada at a land border port-of-entry and seeks protection, he or she still will be processed according to existing guidelines, which often results in placing the minor into removal proceedings under section 240 of the Act. Where the minor is placed into removal proceedings under section 240 of the Act, the Agreement, including its definition of "unaccompanied minor," will be applied by the immigration judge, as provided in the Department of Justice proposed rule published in the **Federal Register**.

What Type of Evidence Will Satisfy USCIS When Determining Whether an Individual Meets One of the Exceptions in the Agreement?

As specified in the proposed rule at § 208.30(e)(6)(ii) and pursuant to a Statement of Principles concerning the implementation of the Agreement, the alien bears the burden of proof to establish by a preponderance of the evidence that an exception applies, such that the alien falls outside the scope of the Agreement. Asylum officers will use all available evidence, including the individual's testimony, affidavits and other documentation, as well as available records and databases, to determine whether an exception to the Agreement applies in each individual's case. Credible testimony alone may be sufficient to establish that an exception applies, if there is a satisfactory explanation of why corroborative documentation is not reasonably available. DHS recognizes that computer systems and DHS records will not be sufficient to verify family relationships in all circumstances and that asylum seekers fleeing persecution often will not have documents establishing family relationships with them at the time they seek to enter the United States. Asylum officers receive extensive training in evaluating credibility of testimony when there is little or no documentation in support of that testimony. Asylum officers will document their findings that the Agreement or its exceptions are applicable to an alien, and in the case of any alien who qualifies for one of the Agreement's exceptions, will immediately proceed to make a credible fear determination, as described in sections 235(b)(1)(B)(ii) and (iii) of the Act.

How Does the Safe Third Country Agreement Address the Possibility That Individuals Will Be Removed Without Having Their Protection Claims Heard?

An individual referred by either Canada or the United States to the other country under the terms of Article 4 cannot be removed to a third country until an adjudication of the individual's protection claims has been made. The Agreement also provides, in Article 3, that an individual returned to the country of last presence shall not be removed to another country pursuant to any other Safe Third Country Agreement or regulation.

How Does the Safe Third Country Agreement Affect People Who Are Being Removed From Canada or the United States and Then Seek Protection While Transiting Through the Other Country?

Pursuant to Article 5(a) of the Agreement, if an alien is being removed from Canada through the United States and expresses a fear of persecution or torture, the alien will be returned to Canada for Canada to adjudicate his or her protection claims, in accordance with Canada's protection system. Generally, individuals being removed by Canada through the United States are pre-inspected in Canada and escorted by Canadian immigration officials to their onward destination. Individuals who make a protection claim during pre-inspection will not be allowed to transit through the United States. Individuals being removed by Canada in transit through the United States are considered arriving aliens in parole status, as described in section 212(d)(5) of the Act. If such an individual asserts a fear of persecution or torture to a U.S. immigration officer, while in transit through the United States, the individual's parole status will be terminated pursuant to § 212.5(e)(2)(i), and he or she generally will be placed in expedited removal proceedings, though there may be some rare instances

in which the individual will be placed in removal proceedings under section 240 of the Act. Transit aliens placed in expedited removal proceedings under this provision will be subject to the same asylum officer threshold screening process as aliens arriving at U.S.-Canada land border ports-of-entry. For those rare instances in which such a transit alien is placed in removal proceedings pursuant to section 240 of the Act, the Agreement will be applied by the immigration judge as provided in the Department of Justice proposed rule, published in the **Federal Register**.

The effect of the Agreement on an asylum seeker being removed from the United States through Canada depends on whether the United States already has considered any asylum, withholding, or Torture Convention claim(s). If the United States has considered but denied the alien's protection claims, the person will be permitted onward movement, in accordance with Article 5(c) of the Agreement. If the United States has not already adjudicated the alien's protection claims, the person will be returned to the United States for such an adjudication.

How Does the Agreement Affect Individuals Who Seek Withholding of Removal or Protection Under the Convention Against Torture?

Article 33 of the 1951 Refugee Convention, as supplemented by the 1967 Refugee Protocol, requires that signatory states not return persons to any country where their lives or freedom would be threatened on account of their race, religion, nationality, political opinion, or membership in a particular social group. The U.S. is a signatory to the 1967 Protocol, and Canada is a signatory to both the 1951 Refugee Convention and the 1967 Protocol. The U.S. implements its obligations under the 1967 Protocol in section 241(b)(3) of the Act, which, as implemented, prohibits DHS from removing aliens to any country where it is more likely than not that their lives or freedom would be threatened on account of the grounds enumerated above. Nevertheless, DHS is not prevented from removing aliens to countries where their lives or freedom would not be threatened.

Article 3 of the Convention Against Torture prohibits the return of persons to any country where there are substantial grounds for believing that they would be subject to torture. Like the United States, Canada is a signatory to the Convention Against Torture. The United States implements this obligation by granting withholding of removal or deferral of removal to a country where it is more likely than not that the applicant would be subject to torture.

Article 3 of the Agreement provides that "the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of [the Agreement] to another country until an adjudication of the person's refugee status claim has been made." In Article 1, the Agreement defines a refugee status claim to include a request for protection under the 1951 Refugee Convention, 1967 Protocol, or Convention Against Torture. Returning any alien to Canada pursuant to the terms of the Agreement for a consideration of the alien's protection claims, in the absence of any grounds for believing that the alien would be persecuted or tortured in Canada, is consistent with the United States' international protection obligations.

Does CBP Plan To Place Aliens Returned to the United States From Canada Under the Safe Third Country Agreement Into Expedited Removal Proceedings?

No. For an alien to be subject to the expedited removal provisions, the alien must first meet the definition of arriving alien. The Board of Immigration Appeals has held that an alien who goes abroad but is returned to the United States after having been formally denied admission by the foreign country is not an applicant for admission, since, in contemplation of law, the alien did not leave the United States. Matter of T, 6 I&N Dec. 638 (1955). Those who entered the United States legally or illegally and are later denied admission by Canada are not arriving aliens and therefore not subject to expedited removal. Depending on their status, they may or may not be subject to removal proceedings before an immigration judge, pursuant to section 240 of the Act, or removal pursuant to sections 241(a)(5) (reinstatement of a prior order) or 238(b) (administrative removal based on aggravated felony conviction) of the Act. For example, this return to the United States would not qualify as an "arrival" for purposes of determining whether an applicant has filed for asylum within one year of the date of his or her last arrival in the United States, as required under section 208(a)(2)(B) of the Act.

How Does This Proposed Rule Affect Individuals Who Enter the United States Through Canada and Who Then Apply for Asylum?

The proposed rule does not affect any individuals who apply for asylum after entering the United States from Canada. The proposed rule is limited only to those individuals who are placed in expedited removal or removal proceedings upon arrival at U.S.-Canada land border ports-of-entry and to those who are aliens in transit through the United States subsequent to removal from Canada. Individuals who previously entered the United States, having come from Canada, and later apply for asylum affirmatively with USCIS or defensively in removal proceedings before an immigration judge are not arriving aliens and so will not be barred from applying for asylum by operation of the Agreement.

Regulatory Flexibility Act

DHS has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and by approving it, DHS preliminarily certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual aliens, as it relates to claims of asylum. It does not affect small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of Homeland Security has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review. In particular, the

Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs.

The proposed rule would implement a bilateral agreement that allocates responsibility between the United States and Canada for processing claims of certain asylum seekers. The rule applies to individuals who are subject to expedited removal and, under existing regulations, would receive a credible fear interview by an asylum officer. This rule simply adds a preliminary screening by asylum officers to determine whether the alien is even eligible to seek protection in the United States, in which case the asylum officer will then proceed to make the credible fear determination under existing rules. Based on statistical evidence, it is anticipated that approximately 200 aliens may seek to enter the United States from Canada at a land border port-of-entry and be placed into expedited removal proceedings. A significant number of these aliens will be found exempt from the Agreement and eligible to seek protection in the United States after the threshold screening interview proposed in this rule. It is difficult to predict how many aliens will be returned to the U.S.-Canadian border under the Agreement, but the costs incurred in detaining and transporting them are not likely to be substantial. Therefore, the "tangible" costs of this rulemaking to the U.S. Government are minimal. Applicants who are found to be subject to the Safe Third Country Agreement will be returned to Canada to seek protection, saving the U.S. Government the cost of adjudicating their asylum claims and, in some cases, the cost of detention throughout the asylum process.

The cost to asylum seekers who, under the proposed rule, will be returned to Canada are the costs of pursuing an asylum claim in Canada, as opposed to the United States. There is no fee to apply for asylum in Canada and, under Canadian law, asylum seekers are provided social benefits that they are not eligible for in the United States, including access to medical coverage, adult public education, and public benefits. Therefore, the tangible costs of seeking asylum in Canada are no greater than they are in the United States. However, because there may be other tangible costs to asylum seekers attempting to enter the United States from Canada at a land border port-of-entry (*e.g.*, transportation costs to the U.S. border), public comment is invited for further consideration of what such additional costs may include. The "intangible" costs to asylum seekers who would be returned to Canada under the proposed rule are the costs of potential separation from support networks they may be seeking to join in the United States. However, the Agreement contains broad exceptions based on principles of family unity that would generally allow those with family connections in the United States to seek asylum in the United States under existing regulations governing the credible process.

The proposed rule benefits the United States because it enhances the ability of the U.S. and Canada to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. By implementing the Agreement, the proposed rule furthers U.S. and Canadian goals, as outlined in the 30-Point Action Plan under the Smart Border Declaration signed by Secretary Ridge and former Canadian Deputy Foreign Minister John Manley, to ensure a secure flow of people between the two countries while preserving asylum seekers' access to a full and fair asylum process in a manner consistent with U.S. law and international obligations. Further, the Agreement and proposed rule save the U.S. the time and expense of adjudicating protection claims brought by asylum seekers who have already had a full and fair opportunity to present their claims in Canada.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The regulations at 8 CFR 208.30 require that an asylum officer conduct a threshold screening interview to determine whether an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act. The threshold screening interview is considered an information collection requirement subject to review by OMB under the Paperwork Reduction Act of 1995. Written comments are encouraged and will be accepted until May 7, 2004. When submitting comments on the information collection, your comments should address one or more of the following four points.

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of any and all appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Credible fear threshold screening interview.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals. The information collection is necessary in order for the CIS to make a determination whether an alien is eligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200 respondents at 30 minutes per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 100 burden hours.

All comments and suggestions or questions regarding additional information should be directed to the Department of Homeland Security, U.S. Citizenship and Immigration Services, Regulations and Forms Services Division, 425 I Street, NW., Room 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, 202–514–3291.

Family Assessment Statement

DHS has reviewed this regulation and determined that it may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. Accordingly, DHS has assessed this action in accordance with the criteria specified by section 654(c)(1). In this proposed rule, an alien arriving at a land border port-of-entry with Canada may qualify for an exception to the Safe Third Country Agreement, which otherwise requires individuals to seek protection in the country of last presence (Canada), by establishing a relationship to a family member in the United States who has lawful status in the United States, other than a visitor, or is 18 years of age or older and has an asylum application pending. This proposed rule incorporates the Agreement's definition of "family member," which may be a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew. The "family member" definition was intended to be broad in scope, to promote family unity. This proposed rule thereby strengthens the stability of the family by providing a mechanism to reunite separated family members in the United States.

In some cases the proposed rule will have a negative effect resulting in the separation of family members. The Agreement's exceptions, as expressed in the proposed rule, require the family member to have either lawful status in the United States, other than visitor, or else to be 18 years of age or older and have a pending asylum application. Family members who do not meet one of these conditions, therefore, would be separated under the proposed rule. However, this proposed rule's definition of "family member" and the exceptions to the Agreement are more generous than other family-based immigration laws, which require the anchor family member to have more permanent status in the United States (such as citizen, lawful permanent resident, asylee or refugee) and which have a more restricted list of the type of family relationships that can be used to sponsor someone for immigration to the United States (although, unlike those laws, this Agreement provides only an opportunity to apply for protection and does not directly confer an affirmative immigration benefit). Under this rule, family members will be able to reunite even if the anchor relative's status is less than permanent in the United States.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

2. Section 208.4 is amended by adding a new paragraph (a)(6) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) * * *

(6) *Safe Third Country Agreement.* Asylum officers have authority to apply section 208(a)(2)(A) of the Act, relating to the determination that the alien may be removed to a safe country pursuant to a bilateral or multilateral agreement, only as provided in § 208.30(e). For provisions relating to the authority of immigration judges with respect to section 208(a)(2)(A), see 8 CFR 1240.11(g).

* * * * *

3. Section 208.30 is amended by:

a. Redesignating paragraph (e)(4) as (e)(7);

b. Redesignating paragraphs (e)(2) and (e)(3) as (e)(4) and (e)(5) respectively;

c. Revising newly designated paragraphs (e)(4) and (e)(5);

d. Adding new paragraphs (e)(2), (e)(3), and (e)(6);

e. Revising paragraph (g)(2)(i), and by

f. Removing paragraphs (g)(2)(iii) and (g)(2)(iv).

The additions and revisions read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(e) * * *

(2) An alien will be found to have a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act.

(3) An alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to §§ 208.16 or 208.17.

(4) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer shall consider whether the alien's case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.

(5) Except as provided in paragraph (e)(6) of this section, if an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and 208(b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Department of Homeland Security shall nonetheless place the alien in proceedings under section 240 of the Act for full consideration of the alien's claim, if the alien is not a stowaway. If the alien is a stowaway, the Department shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

(6) Prior to any determination concerning whether an alien arriving in the United States at a U.S.-Canada land border port-of-entry or in transit through the U.S. during removal by Canada has a credible fear of persecution or torture, the asylum officer shall conduct a threshold screening interview to determine whether such an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act and subject to removal to Canada under the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries ("Agreement"). In conducting this threshold screening interview, the asylum officer shall advise the alien of the Agreement's exceptions and question the alien as to applicability of any of these exceptions to the alien's case.

(i) If the asylum officer determines that an alien does not qualify for an

exception under the Agreement during this threshold screening interview, the alien is ineligible to apply for asylum in the United States. After review of this finding by a supervisory asylum officer, the alien shall be advised that he or she will be removed to Canada in order to pursue his or her claims relating to a fear of persecution or torture under Canadian law. Aliens found ineligible to apply for asylum under this paragraph shall be removed to Canada.

(ii) If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of the Agreement, the asylum officer shall make a written notation of the basis of the exception, and then proceed immediately to a determination concerning whether an alien has a credible fear of persecution or torture.

(iii) An alien qualifies for an exception to the Agreement if the alien is not being removed from Canada in transit through the United States and:

(A) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;

(B) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who has been granted asylum, refugee, or other lawful status in the United States, provided, however, that this exception shall not apply to an alien whose relative maintains only nonimmigrant visitor status, as defined in section 101(a)(15)(B) of the Act, or whose relative maintains only visitor status based on admission to the U.S. pursuant to the Visa Waiver Program;

(C) Has in the United States a spouse, son, daughter, parent, legal guardian, sibling, grandparent, grandchild, aunt, uncle, niece, or nephew who is at least 18 years of age and has an asylum application pending before U.S. of Citizenship and Immigration Services, the Executive Office for Immigration Review, or on appeal in federal court in the United States;

(D) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;

(E) Arrived in the United States with a validly issued visa or other valid admission document, other than for transit, issued by the United States, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or

(F) The Department of Homeland Security determines, in the exercise of unreviewable discretion, that it is in the public interest to allow the alien to pursue a claim for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

(iv) As used in § 208.30(e)(6)(iii)(B), (C) and (D) only, "legal guardian" means a person currently vested with legal custody of such an alien or vested with legal authority to act on the alien's behalf, provided that such an alien is both unmarried and less than 18 years of age, and provided further that any dispute with respect to whether an individual is a legal guardian will be resolved on the basis of U.S. law.

* * * * *

(g) * * *

(2) * * *

(i) Immigration judges will review negative credible fear findings as provided in 8 CFR 1208.30(g)(2).

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

5. Section 212.5 is amended by adding new paragraph (e)(2)(iii) to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * * *

(e) * * *

(2) * * *

(iii) Any alien granted parole into the United States so that he or she may transit through the United States in the course of removal from Canada shall have his or her parole status terminated upon notice, as specified in § 212.5(e)(2)(i), if he or she makes known to an immigration officer of the United States a fear of persecution or an intention to apply for asylum. Upon termination of parole, any such alien shall be regarded as an applicant for admission, and processed accordingly by the Department of Homeland Security.

* * * * *

Dated: January 26, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–5077 Filed 3–5–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1003, 1208, 1212, and 1240

[EOIR No. 142P; AG Order No. 2709–2004]

RIN 1125–AA46

Asylum Claims Made by Aliens Arriving from Canada at Land Border Ports-of-Entry

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: The recent Safe Third Country agreement between the United States and Canada provides new procedures for dealing with certain categories of aliens crossing at land border ports-of-entry between the United States and Canada, or in transit from Canada or the United States, and who express a fear of persecution or torture if returned to the country of their nationality or habitual residence. The Agreement recognizes that the United States and Canada are safe third countries, each of which offers full procedures for nationals of other countries to seek asylum or other protection. Accordingly, subject to several specific exceptions, the Agreement provides for the United States to return such arriving aliens to Canada, the country of last presence, to seek protection under Canadian law, rather than applying for asylum in the United States. Subject to the stated exceptions, such aliens attempting to travel from Canada to the United States, or vice versa, will be allowed to seek asylum or other protection in one country or the other, but not in both.

Elsewhere in this issue of the **Federal Register**, the Department of Homeland Security (DHS) is publishing a proposed rule that would, among other things, give asylum officers the authority to apply the Agreement with respect to arriving aliens. This proposed rule provides that the immigration judges will not review the threshold factual determinations by asylum officers that an alien does not satisfy any of the exceptions under the Agreement. However, for any alien who the asylum officer determines is not barred by the Agreement, the existing credible fear process under section 235(b) of the Immigration and Nationality Act (Act) remains unchanged, including the right to seek review by an immigration judge. Finally, this rule provides authority for an immigration judge to apply the Agreement with respect to aliens whom DHS has chosen to place in removal proceedings under section 240 of the Act.

DATES: Written comments must be submitted on or before May 7, 2004.

FOR FURTHER INFORMATION CONTACT: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

ADDRESSES: Please submit written comments to Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia, 22041. To ensure proper handling, please reference RIN No. 1125–AA46 on your correspondence. The public may also submit comments electronically to the EOIR at *eoir.regs@usdoj.gov*. When submitting comments electronically, you must include RIN No.1125–AA46 in the subject box.

SUPPLEMENTARY INFORMATION: On December 5, 2002, the governments of the United States and Canada signed the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries ("bilateral Agreement with Canada" or "Agreement"). The Agreement will not take effect until the United States has promulgated implementing regulations and Canada has completed its own necessary domestic procedures to bring the Agreement into force. The supplementary information in the proposed rule of the Department of Homeland Security published elsewhere in this issue of the **Federal Register** explains in greater detail the goals of the Agreement and the reasons for including its particular terms and exceptions, and persons commenting on this rule should keep in mind the discussion of these issues in the DHS proposed rule.

Terms of the Agreement

This Agreement permits the United States to return to Canada, the country of last presence, certain aliens seeking protection who attempt to enter the United States from Canada at a land border port-of-entry, or are being removed from Canada in transit through the United States. Such aliens are not eligible to apply for asylum, withholding of removal, or protection under the Convention Against Torture in the United States, unless one of the exceptions stated in the Agreement applies. Under the Agreement, those aliens who are returned to Canada will have their protection claims adjudicated by Canadian authorities under Canadian law. Similarly, the Agreement permits Canada to return to the United States certain aliens seeking protection attempting to enter Canada from the United States at land border ports-of-entry, and certain aliens being removed from the United States in transit through Canada. In either case, the Agreement ensures that the asylum seekers will have access to a full and fair procedure for determining their asylum or other protection claims, either by the United States or by Canada, before the alien can be returned to the country of his or her nationality or habitual residence.

The Agreement applies to aliens arriving from Canada who are inadmissible under section 212(a)(6)(C) (fraud or willful misrepresentation) or section 212(a)(7) (failure to present proper documents) of the Immigration and Nationality Act (Act), 8 U.S.C. 1182(a)(6)(C), (7). In general, all arriving aliens who are inadmissible on either of those grounds are subject to expedited removal pursuant to section 235(b) of the Act. Under 8 CFR 235.3(b)(4), aliens subject to expedited removal who seek asylum in the United States or otherwise express a fear of persecution or torture are referred to an asylum officer employed by U.S. Citizenship and Immigration Services, a component of DHS, for a credible fear determination in accordance with 8 CFR 208.30.

As stated last year when the Agreement was being negotiated, "Such an arrangement would limit the access of asylum seekers, under appropriate circumstances, to the system of only one of the two countries." 67 FR 46213 (July 12, 2002). Thus, the Agreement provides a threshold basis for returning certain arriving aliens to Canada to pursue their protection claims under Canadian law, but also provides several specific exceptions in which arriving aliens would be permitted to remain in the United States in order to pursue protection under United States law.

In particular, the Agreement provides important exceptions based on concerns for family unity, allowing an arriving alien to remain in the United States to pursue protection claims if the alien has a qualifying family member living in the United States and that family member either has been granted lawful status in the United States (other than visitor), or the family member is over the age of 18 and has filed a pending application for asylum. The range of family members who may qualify as "anchor" relatives due to their presence in the United States is far broader than those recognized under other provisions of immigration law. It includes spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews. There is a separate exception for minors who do not have a parent in either the United States or Canada, though the definition of "unaccompanied minor" under the Agreement is also different than that used in other contexts under the immigration laws.

The Agreement also has exceptions for an arriving alien who is a citizen of Canada (or a habitual resident of Canada not having a country of nationality), as well as for aliens who presented a valid visa or other travel document (other than for transiting the United States) or were exempt from the requirement to present a passport.

Finally, the Agreement recognizes that the United States Government may conclude, in its discretion, that it is in the public interest to allow an arriving alien to remain in the United States to pursue protection even though the alien does not meet any of the specific exceptions under the Agreement. This latter discretionary determination is reserved to DHS alone and is not within the province of the immigration judges to review or grant.

The DHS proposed rule on this subject provides a more complete discussion of the Agreement, and the exceptions under the Agreement that would be codified at 8 CFR 208.30. The specific terms of the bilateral Agreement with Canada can be found on the DHS Web site at *http://www.uscis.gov*.

Legal Authority Permitting the Use of a Bilateral Agreement as a Bar to Applying for Asylum

Section 208(a)(1) of the Act permits any alien who is physically present in or who arrives at the United States to apply for asylum, and specifically recognizes the right of arriving aliens to present claims for asylum through the credible fear review process under section 235(b) of the Act. However, section 208(a)(2)(A) of the Act states that the right to apply for asylum under paragraph (1) shall not apply where, "pursuant to a bilateral or multilateral agreement, the alien may be removed to a country where the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General [or the Secretary of Homeland Security] finds that it is in the public interest for the alien to receive asylum in the United States."

The bilateral Agreement with Canada allocates responsibility between the

United States and Canada for processing claims of certain asylum-seekers, enhancing the two nations' ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. At present, it is the only agreement, for purposes of section 208(a)(2)(A) of the Act, that would bar an arriving alien from applying for asylum in the United States.

Implementation of the Agreement

The DHS rule published elsewhere in this issue of the **Federal Register** proposes to revise the DHS rules in 8 CFR chapter I, parts 208 and 212 to implement the provisions of the Agreement. This rule proposes revisions to the regulations of the Department of Justice relating to the role of immigration judges in implementing the Agreement.

Until February 28, 2003, the regulations governing the immigration judges and the Board of Immigration Appeals (BIA) were also in 8 CFR chapter I because the former Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) were both part of the Department of Justice under the authority of the Attorney General. On March 1, 2003, however, the functions of the former INS were transferred from the Department of Justice to DHS pursuant to the Homeland Security Act (HSA), Public Law 107–296, 116 Stat, 2135, 2178. (2002). That law also provided that EOIR (including the administrative adjudications conducted by the immigration judges and the BIA) remains in the Department of Justice under the authority of the Attorney General. Accordingly, on February 28, 2003, the Attorney General published a technical rule that reorganized title 8 of the Code of Federal Regulations to reflect the transfer of the functions of the former INS to DHS while creating a separate set of regulations pertaining to EOIR. *See* Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824 (Feb. 28, 2003). This technical rule created a new chapter V in 8 CFR and transferred or duplicated certain parts and sections from chapter I to the new chapter V and made other amendments. The regulations governing proceedings before EOIR are now contained in 8 CFR chapter V, beginning with part 1001. The DHS regulations pertaining to the Act remain in 8 CFR chapter I.

In its rule, DHS proposes to implement the Agreement by revising 8 CFR 208.4 and 208.30 to permit asylum officers to conduct a threshold screening to determine whether or not an alien qualifies for an exception under the Agreement that would allow the alien to pursue an asylum or protection claim in the United States. The exceptions are listed in 8 CFR 208.30(e)(6)(iii) of the DHS proposed rule. If the arriving alien does not qualify for an exception under the Agreement, there would be no need for a credible fear determination on the merits of the alien's asylum claims and, accordingly, no right to seek review of the merits of the asylum claims by an immigration judge, as discussed below. The alien would be returned to Canada to pursue an asylum or protection claim under Canadian law. If the arriving alien does qualify for an exception to the Agreement, the asylum officer would proceed promptly to consider the merits of the alien's claims for protection under United States law through the regular credible fear process. Finally, DHS adopts definitions of "credible fear of persecution" and "credible fear of torture" in the 8 CFR 208.30(e).

This proposed rule is a companion to the DHS rule. Because the immigration judges and the BIA have independent authority over asylum and withholding claims made by aliens in removal proceedings, the Attorney General duplicated all of the provisions of 8 CFR part 208 as a new part in 8 CFR chapter V, part 1208. While DHS is making changes to its regulations in part 208 governing the asylum officers, the Attorney General in this rule is proposing to make changes to parts 1003 and 1208, relating to review of negative credible fear determinations by immigration judges, and part 1240, relating to the application of the Agreement to aliens in removal proceedings.

This rule takes account of the proposed changes being made by DHS in 8 CFR part 208, but does not propose to duplicate in part 1208 the full text of all of those changes. Many of the changes that DHS is proposing to make to 8 CFR 208.30 pertain only to the actions of the asylum officers, and do not directly affect the authority of the immigration judges and the BIA. Thus, in many instances, this rule will remove existing language from 8 CFR part 1208.30 and simply insert cross-references to the provisions of the DHS regulations in part 208.30 rather than reprinting them in full. In addition, because the provisions in 8 CFR 212.5 relating to the granting of parole pertain to actions by the Department of Homeland Security, and do not directly affect the authority of the immigration judges and the BIA, this rule does not attempt to track the changes that DHS is proposing to make to 8 CFR 212.5. Instead, this rule proposes to remove the entire text of the parallel provision in 8 CFR 1212.5 and merely insert a cross-reference to the DHS regulations in 8 CFR 212.5.

Threshold Screening of an Alien's Eligibility Under the Agreement

Under section 235(b)(1)(B)(iii)(III) of the Act, an arriving alien who has received a negative credible fear determination by an asylum officer may request a prompt review by an immigration judge. The purpose of this review by an immigration judge is to allay concerns that an arriving alien might be returned to the country of his or her nationality or habitual residence to face persecution or torture, without having had an adequate opportunity to present his or her claims to U.S. immigration officials. The current regulations governing review of credible fear determinations by immigration judges are codified in 8 CFR 1003.42 and 1208.30(g)(2). In the credible fear review process, the alien is able to present any information relating to the likelihood of persecution or torture if the alien were removed to the country of his or her nationality or habitual residence.

For aliens who are subject to the Agreement, however, the threshold question is whether the alien should be returned to Canada for Canadian authorities to consider the merits of that alien's claims, or whether the alien will be allowed to pursue protection in the United States. Because the threshold nature of the issues under the Agreement is quite different from the issues relating to the merits of an alien's claimed fear of persecution or torture if returned to his or her country of nationality, this proposed rule, like the DHS rule, does not provide for an immigration judge to review an asylum officer's threshold determination under the Agreement that the alien should be returned to Canada for a determination of his or her asylum claims under Canadian law.

In the credible fear process, asylum officers consider the merits of the claimed fear of persecution or torture in making a credible fear determination. If the asylum officer makes a negative credible fear determination, the alien has the right to have an immigration judge review the merits of that determination. In contrast, in the case of an arriving alien from Canada who is subject to the Agreement and does not meet any of the exceptions, the merits of the alien's claims would not even arise in any proceedings before an immigration judge, and there would be no occasion for an immigration judge to consider or determine whether or not

the alien in fact has a credible fear of facing persecution or torture if returned to the country of his or her nationality or habitual residence. Such issues are irrelevant to a review of the specific exceptions under the Agreement (since the public interest exception under the Agreement is for DHS alone to consider, not an immigration judge). Unless the alien is under the age of 18 and unaccompanied, the principal issue for DHS to consider under the Agreement as a practical matter in deciding if the alien meets one of the exceptions will be whether the alien has a qualifying family member living in the United States (*i.e.*, a qualifying family member who is either in lawful immigration status in the United states, other than as a visitor, or has a pending asylum application).

Given the narrowness of the factual issues, the Department believes that the applicability of the Agreement can readily be considered and adjudicated by asylum officers. None of the threshold factual determinations under the Agreement has any relationship to the merits of an arriving alien's asylum claims, and none calls for the kind of expert judgment exercised by immigration judges in conducting credible fear reviews concerning the merits of an arriving alien's asylum claims. In addition, because the law requires that arriving aliens be detained, providing for reviews by immigration judges of these threshold issues under the Agreement through a credible fear review would likely result in prolonging the detention of such aliens, since the law provides that such a credible fear review can occur as late as 7 days after the asylum officer's determination. For these reasons, this rule provides that an immigration judge will not have jurisdiction to review an asylum officer's threshold determination under the Agreement that an alien is to be returned to Canada in order to pursue an adjudication of his or her asylum claims under Canadian law.

Removal Proceedings

New § 1240.11(g) provides rules pertaining to an arriving alien who is subject to the Agreement but DHS, in its discretion, decides to place the alien into removal proceedings under section 240 of the Act, rather than in expedited removal. Thus, if the immigration judge determines that the alien was placed into removal proceedings in connection with his or her arrival at a United States port-of-entry on the United States/Canadian land border, the alien would not be eligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act unless an exception to the Agreement is applicable. DHS might decide, in its discretion, to place an arriving alien into regular removal proceedings, for example, in order to lodge additional charges of inadmissibility against the alien, or, as suggested in the supplementary information in the DHS draft rule, because the alien is a minor. However, if DHS is seeking removal of the alien upon his or her arrival from Canada at a United States land border, it does not make any legal difference under the Agreement and under section 208(a)(2)(A) of the Act whether DHS has decided to use expedited removal procedures under section 235 of the Act or regular removal proceedings under section 240 of the Act.

Under this rule, an alien in regular removal proceedings who is subject to the Agreement would not be able to pursue an application for asylum, withholding of removal, or protection under the Convention Against Torture before the immigration judge, unless the alien satisfies the burden of proof to establish by a preponderance of the evidence that he or she qualifies for an exception to the Agreement, other than the public interest exception. (As previously noted, the decision to invoke the public interest exception is solely within the discretion of DHS. If DHS determines that it is in the public interest to allow a covered alien to pursue a claim for asylum or withholding of removal in removal proceedings, then DHS will file a written notice of its decision before the immigration judge, as provided in new 8 CFR 1240.11(g)(3).) If the alien does not establish an exception, he/she will be returned to Canada (the country of the alien's last presence) in order to pursue his or her protection claims there under Canadian law. As provided in the Agreement, the United States cannot remove an arriving alien who is covered by the Agreement to any country other than Canada in order to have recourse to protection under Canadian law.

This rule does not affect any other individuals applying for asylum in removal proceedings who are not subject to the Agreement. In particular, under the terms of the Agreement, an alien who is charged with grounds of deportability after being found in the United States will not be subject to the limitations of the Agreement, even if the alien had previously entered the United States from Canada, or any alien who arrived in the United States by air or water, or who entered the United States illegally at any point between the established land border port-of-entry.

As suggested in the supplementary information in the DHS proposed rule, DHS may exercise its discretion to place certain minors into removal proceedings under section 240 of the Act, rather than in expedited removal, when they arrive at a port-of-entry at the United States/Canadian land border. The Agreement uses a different definition of the term "unaccompanied minor" than is used in other contexts under the immigration laws. An unmarried arriving alien under the age of 18 who does not have a parent either in the United States or Canada will be exempt from the Agreement as an "unaccompanied minor," and will be permitted to pursue claims for asylum, withholding of removal, and protection under the Convention Against Torture before the immigration judge. However, a minor arriving from Canada who does have a parent either in the United States or in Canada will not be eligible for the exception as an unaccompanied minor under the terms of the Agreement (whether or not the alien may be considered an unaccompanied minor for other purposes under the immigration laws). Unless such an alien is able to satisfy one of the other exceptions under the Agreement—such as having a qualifying family member in the United States who either has been granted lawful status or has a pending asylum application—then the minor would not be eligible to apply for asylum, withholding of removal, or protection under the Convention Against Torture before the immigration judge. The immigration judge would consider applications for any other forms of relief for which the alien might be eligible and, if the alien is ultimately ordered removed, he or she would be returned to Canada in order to pursue claims for asylum or refugee protection under Canadian law.

For example, if a 15-year-old asylum-seeker arrives at a United States/Canada land-border port-of-entry without other family members, DHS may choose to place the alien in removal proceedings according to its own policies. In the course of the removal proceedings, the immigration judge will first determine whether the minor has a parent or legal guardian in the United States or Canada, in order to determine whether the "unaccompanied minor" exception to the Agreement applies. If the minor does have a parent or legal guardian in the United States or Canada, the immigration judge will determine whether any of the other exceptions to the Agreement apply. For example, if the alien's parent is living in the United States, the minor would not be an "unaccompanied minor" under the

Agreement, but the parent may be a qualifying relative if the parent either has been granted lawful status in the United States other than as a visitor or has a pending asylum application, as provided in other exceptions to the Agreement.

An alien who is found to be ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act and the bilateral Agreement with Canada will be removed to Canada to have all of his or her claims for protection adjudicated by Canadian authorities under Canadian law. Accordingly, this rule adds § 1240.11(g)(4) to provide that an alien in removal proceedings who is subject to the Agreement is ineligible to apply for withholding of removal under section 241(b)(3) of the Act and the Convention Against Torture if it is determined that he or she is ineligible to apply for asylum based on the Agreement.

Section 241(b)(3)(A) of the Act prohibits removal of an alien to a country where the alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. Similarly, Article 3 of the Convention Against Torture prohibits the return of an individual to another country where there are substantial grounds for believing that he or she would be subject to torture. These provisions, however, do not prevent the United States from removing an individual to any safe third country in which the person would not face the threat of persecution or torture.

Like the United States, Canada is a signatory to the 1967 Protocol Relating to the Status of Refugees ("Protocol")[1] and the Convention against Torture. Article 3 of the bilateral Agreement with Canada provides that "the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of [the Agreement] to another country until an adjudication of the person's refugee status claim has been made." In Article 1, the Agreement defines a refugee status claim to include a request for protection consistent with the Protocol and the Convention Against Torture. Therefore, returning an individual to Canada pursuant to the terms of the Agreement is consistent with United States' obligations not to return an individual to a country where the person would face persecution or torture.

Individuals Being Removed from Canada Who Seek Protection While in Transit Through the United States

Pursuant to the Agreement, if a person is being removed from Canada in transit through the United States and expresses a fear of persecution or torture or an intention to apply for asylum, the person will be returned to Canada for Canadian authorities to determine the refugee status claim, in accordance with Canadian law. The inspection of an alien who falls into this category is explained in the supplementary information in the DHS proposed rule. Generally, an individual being removed from Canada in transit through the United States will be placed in expedited removal proceedings, though there may be some rare instances in which the individual will be placed in removal proceedings under section 240 of the Act. The DHS rule provides that such individuals will receive the same threshold screening by an asylum officer as an alien who seeks entry to the United States at a land border port-of-entry between Canada and the United States. However, the exceptions for unaccompanied minors, qualifying family members, and valid travel documents do not apply to an alien being removed from Canada in transit through the United States. Because the Agreement provides no exceptions to the obligation to return such alien to Canada, except for the public interest exception, and the public interest exception itself would not be within the authority of an immigration judge to consider in any event, there is essentially nothing for an immigration judge to review in this context and no purpose to be served by providing for such review. For those rare instances in which an alien being removed in transit through the United States is placed in removal proceedings pursuant to section 240 of the Act, the immigration judge will not consider any claims of asylum, withholding of removal, or protection under the Convention Against Torture (unless DHS files a written notice in the proceedings that it has decided it is in the public interest to allow the alien to pursue those claims in the United States), and after completion of the proceedings, if the alien is ordered removed, the alien will be returned to Canada. On the other hand, if DHS files a written notice in the proceedings that it is in the public interest to allow the alien to pursue protection claims in the United States, then the alien will pursue his or her claim for protection in the removal proceedings, and, if ordered removed, will be ordered removed to an appropriate country of removal.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual aliens, as it relates to claims of asylum. It does not affect small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Attorney General has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review. In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs.

The proposed rule would implement a bilateral agreement that allocates responsibility between the United States and Canada for processing claims of certain asylum-seekers, enhancing the two nations' ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border. The rule applies to certain individuals

[1] Section 241(b)(3) of the Act is based on Article 33 of the Protocol. *See INS* v *Stevic*, 467 U.S. 407, 421 (1984) ("Section 203(e) of the Refugee Act of 1980 amended the language of § 243(h) [currently § 241(b)(3) of the Act] basically conforming it to the language of Article 33 of the United Nations Protocol.")

in removal proceedings who apply for asylum. This rule simply adds another factor for immigration judges to consider in removal proceedings. Therefore, the "tangible" costs of this rulemaking to the U.S. Government are minimal. Applicants who are found to be subject to the bilateral Agreement with Canada will be returned to Canada to seek asylum, saving the U.S. Government the cost of adjudicating their asylum claims.

The cost to asylum-seekers who, under the proposed rule, will be returned to Canada are the costs of pursuing an asylum claim in Canada, as opposed to the United States. There is no fee to apply for asylum in Canada and, under Canadian law, asylum-seekers are provided social benefits that they are not eligible for in the United States. Therefore, the tangible costs of seeking asylum in Canada are no greater than they are in the United States. The "intangible" costs to asylum-seekers who would be returned to Canada under the proposed rule are the costs of potential separation from support networks they may be seeking to join in the United States. However, the Agreement contains broad exceptions based on principles of family unity that would generally allow those with family connections in the United States to seek asylum in the United States under existing regulations.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because there are no new or revised recordkeeping or reporting requirements.

Family Assessment Statement

The Attorney General has reviewed this regulation and assessed this action in accordance with the criteria specified by section 654(c)(1) of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. The Attorney General has determined that it will not affect family well-being as that term is defined in section 654.

The separate proposed rule published by the Department of Homeland Security explains that an alien arriving at a land border port-of-entry with Canada may qualify for an exception to the bilateral Agreement with Canada, which otherwise requires individuals to seek protection in the country of last presence (Canada), by establishing a relationship to a family member in the United States who has lawful status in the United States, other than a visitor, or is 18 years of age or older and has an asylum application pending. The DHS proposed rule addresses issues relating to family well-being in connection with that rule.

This proposed rule provides that the immigration judges will apply the same administrative guidelines of "family member" in the DHS proposed rule, in those cases where DHS has chosen to place an alien who is subject to the Agreement into removal proceedings under section 240 of the Act. However, that is expected to occur only very rarely. In any other case, where DHS does not choose to place an arriving alien into removal proceedings under section 240 of the Act, this rule has no effect on family well-being, because the immigration judges will not be involved.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and function (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, and Reporting and recordkeeping requirements.

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure and Aliens.

Accordingly, chapter V of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386; 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 1003.42 is amended by adding new paragraph (h) to read as follows:

§ 1003.42 Review of credible fear determinations.

* * * * *

(h) Safe third country agreement—(1) Arriving alien. An immigration judge shall have no jurisdiction to review a determination by an asylum officer that an arriving alien is not eligible to apply for asylum pursuant to a bilateral or multilateral agreement (the agreement) under section 208(a)(2)(A) of the Act and should be returned to a safe third country to pursue his or her asylum claims under the laws of that country. See 8 CFR 208.30(e)(6).

(2) Aliens in transit. An immigration judge has no jurisdiction to review any determination by DHS that an alien being removed from Canada in transit through the United States should be returned to Canada to pursue asylum claims under Canadian law, under the terms of a safe third country agreement with Canada.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

3. The authority citation for part 1208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282.

4. Section 1208.4 is amended by adding new paragraph (a)(6) to read as follows:

§ 1208.4 Filing the application.

* * * * *

(a) * * *

(6) Safe third country agreement. Immigration judges have authority to consider issues under section 208(a)(2)(A) of the Act, relating to the determination of whether an alien is ineligible to apply for asylum and should be removed to a safe third

country pursuant to a bilateral or multilateral agreement, only with respect to aliens whom DHS has chosen to place in removal proceedings under section 240 of the Act, as provided in 8 CFR 1240.11(g). For DHS regulations relating to determinations by asylum officers on this subject, see 8 CFR 208.30(e)(6).

* * * * *

5. Section 1208.30 is amended by:

a. Revising paragraphs (a) and (e); and by

b. Removing and reserving paragraphs (c), (d), (f) and (g)(1).

The revisions read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) Jurisdiction. The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B), asylum officers have exclusive jurisdiction to make credible fear determinations, and the immigration judges have exclusive jurisdiction to review such determinations.

* * * * *

(e) Determination. For the standards and procedures for asylum officers in conducting credible fear interviews and in making positive and negative credible fear determinations, see 8 CFR 208.30(b), (c), (d), (e), (f), and (g)(1). The immigration judges will review such determinations as provided in paragraph (g)(2) of this section and 8 CFR 1003.42.

* * * * *

PART 1212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

6. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103.

7. Section 1212.5 is revised to read as follows:

§ 1212.5 Parole of aliens into the United States.

Procedures and standards for the granting of parole by the Department of Homeland Security can be found at 8 CFR 212.5.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

8. The authority citation for part 1240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; sec. 1101, Pub. L. 107–269, 116 Stat. 2135.

9. Section 1240.11 is amended by adding a new paragraph (g), to read as follows:

§ 1240.11 Ancillary matters, applications.

* * * * *

(g) Safe third country agreement. (1) The immigration judge has authority to apply section 208(a)(2)(A) of the Act, relating to a determination that an alien may be removed to a safe third country pursuant to a bilateral or multilateral agreement, in the case of an alien who is subject to the terms of the agreement and is placed in proceedings pursuant to section 240 of the Act without being processed under section 235 of the Act. In an appropriate case, the immigration judge shall determine whether under the Agreement the alien should be returned to the safe third country, or whether the alien should be permitted to pursue asylum or other protection claims in the United States.

(2) An alien described in paragraph (g)(1) of this section is ineligible to apply for asylum, pursuant to section 208(a)(2)(A) of the Act, unless the immigration judge determines, by preponderance of the evidence, that:

(i) The agreement does not apply to the alien or does not preclude the alien from applying for asylum in the United States; or

(ii) The alien qualifies for an exception to the agreement as set forth in paragraph (g)(3) of this section.

(3) The immigration judge shall apply the applicable regulations in deciding whether the alien qualifies for any exception under the agreement that would permit the United States to exercise authority over the alien's asylum claim. The exceptions under the agreement are codified at 8 CFR 208.30(e)(6)(iii). The immigration judge shall not review, consider, or decide any issues pertaining to any discretionary determination on whether the alien should be permitted to pursue an asylum claim in the United States notwithstanding the general terms of the agreement, as such discretionary public interest determinations are reserved to the Department of Homeland Security. However, an alien in removal proceedings who is otherwise ineligible to apply for asylum under the agreement may apply for asylum if the Department of Homeland Security files a written notice in the proceedings before the immigration judge that it has decided in the public interest to allow the alien to pursue claims for asylum or withholding of removal in the United States.

(4) An alien who is found to be ineligible to apply for asylum under section 208(a)(2)(A) of the Act is ineligible to apply for withholding of removal pursuant to section 241(b)(3) of the Act and the Convention against Torture. However, the alien may apply for any other relief from removal for which the alien may be eligible. If an alien who is subject to section 208(a)(2)(A) of the Act is ordered removed, the alien shall be ordered removed to the safe third country in which the alien will be able to pursue his or her claims for asylum or protection under the laws of that country.

Dated: March 1, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04–5065 Filed 3–5–04; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. 03–080–2]

RIN 0579–AB73

Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the regulations regarding the importation of animals and animal products to recognize, and add Canada to, a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States via live ruminants and ruminant products. The proposed rule also set out conditions under which we would allow the importation of certain live ruminants and ruminant products and byproducts from such regions. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before April 7, 2004.

ADDRESSES: You may submit comments by any of the following methods:

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–0801, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–080–1.

• E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–080–1" on the subject line.

• Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2003, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (68 FR 62386–62405, Docket No. 03–080–1) a proposal to amend the regulations regarding the importation of animals and animal products to recognize a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy (BSE) into the United States via live ruminants and ruminant products, and proposed to add Canada to this category. We also proposed to allow the importation of certain live ruminants and ruminant products and byproducts from such regions under certain conditions. Comments on the proposed rule were required to be received on or before January 5, 2004. In addition to inviting comments on the proposed rule itself, APHIS invited comments on an analysis the Agency had conducted of the risk of importing the animals and animal products in question from Canada under the conditions of the proposed rule. At the time the proposed rule was published, BSE had never been detected in the United States and only a single case had been reported in Canada (in Alberta in May 2003).

On December 23, 2003, the U.S. Department of Agriculture (USDA) announced a presumptive positive case of BSE in a Holstein cow in Washington State. The diagnosis was verified on December 25, 2003, by an international reference laboratory. The investigation that was conducted following detection of the disease revealed the animal was born in Canada and had most likely been exposed to the BSE agent in that country.

Since the date of detection of BSE in the cow in Washington State, the USDA and other Federal and State agencies have worked together closely to perform an epidemiological investigation, trace any potentially infected cattle, trace potentially contaminated rendered product, increase BSE surveillance, and take additional measures to address human and animal health. Additionally, an international panel of scientific experts appointed by the Secretary of Agriculture has provided a review of U.S. BSE response actions and has made recommendations for enhancements of the national BSE response program in the United States.[1]

Detection of BSE in the imported cow in Washington State occurred after APHIS conducted its analysis of the risk of importing ruminants and ruminant products and byproducts from Canada under the conditions of the proposed rule. Therefore, it is important for us to explain the extent to which we believe that detection may affect the conclusions of the risk analysis, and, consequently, the validity of the proposed rule. Therefore, we have prepared an explanatory document, discussed below, that addresses the effect of the detection of the imported cow on the analysis of risk that we conducted for the November 2003 proposed rule.

Effect of the Detection of BSE on APHIS's Analysis of Risk

The epidemiological investigation that was conducted following detection of BSE in an imported cow in Washington State[2] revealed several points that are relevant to whether and how that detection affects our analysis of the risk of importing ruminants and ruminant products from Canada under the conditions of the November 2003 proposed rule.

• The infected heifer was approximately 6 years and 8 months old at the time the disease was diagnosed. Its age indicated that it was born before implementation of a ban in Canada on feeding mammalian protein to ruminants and was most likely to have become infected before that feed ban was implemented.

• The animal was imported into the United States in 2001 at approximately 4 years of age.

Among the conditions for importing cattle from Canada under the proposed rule was the requirement that the animals be no more than 30 months old. This restriction was based on research indicating the most likely cattle to have infectious levels of the BSE agent are those older than 30 months. Additionally, the proposed rule required that the animals not have been fed ruminant protein.

Although the BSE-infected cow identified in Washington State was more than 30 months of age when it was diagnosed, it was obviously not imported under the conditions of the yet-to-be-implemented proposed rule, and would not have been allowed to be imported under the proposed rule. Further, as discussed in the risk analysis, a ban on feeding mammalian protein to ruminants was implemented in Canada in 1997 and compliance with that feed ban appears to have been, and to continue to be, good. The cow identified with BSE in the United States was born in Canada before the feed ban was implemented. Therefore, we continue to believe that the import controls of the proposed rule would be effective.

The analysis of risk we conducted addressed the issue of the prevalence of BSE in Canada. The risk analysis

[1] You may view the international panel's report on the Internet by accessing the APHIS Web site at *http://www.aphis.usda.gov/lpa/issues/bse/bse.html*. At the BSE page, click on the listing for "The Secretary's Foreign Animal and Poultry Disease Advisory Committee's Report on Measures Relating to Bovine Spongiform Encephalopathy (BSE) in the United States."

[2] A summary of the epidemiological investigation is included in our explanatory note document. Instructions for accessing the explanatory note document are included in this notice under the heading "How to View APHIS Risk Documents Related to this Notice."

presented evidence that the prevalence was very low and that Canada had strong BSE controls in place. Although the detection of an imported BSE-infected cow in Washington State means an additional animal of Canadian origin has been diagnosed with BSE since completion of the risk analysis and publication of the proposed rule, the total number of diagnosed cases attributed to that country remains low. Further, Canada has implemented strong measures to prevent the establishment, propagation, and spread of BSE among cattle in that country, to detect infected animals through surveillance, and to protect the Canadian animal and human food supplies.

Given the conditions APHIS is proposing for the importation of ruminants and ruminant products from Canada, we believe it is highly unlikely that BSE would be introduced from Canada under the proposed rule. Based on the factors discussed in the original risk analysis, along with risk mitigation measures currently in place and those that would be added by the proposed rule, we have concluded that a BSE case in a second cow of Canadian origin does not alter our risk estimate.

Canadian Investigation Following Detection of a BSE-Infected Cow in Washington State

The Canadian Food Inspection Agency (CFIA) initiated an epidemiological investigation specifically in response to the confirmation of a BSE-infected cow of Canadian origin in Washington State. This investigation was conducted concurrently and cooperatively with the U.S. investigation of animals from the same Canadian herd of origin. CFIA is continuing its epidemiological investigation.

The Government of Canada has also announced plans to enhance existing measures being taken in that country regarding BSE surveillance and animal tracking by increasing the number of animals tested for BSE annually and by strengthening Canada's animal identification program.[3]

Actions Taken in the United States After Detection of the Imported BSE-Infected Cow

Although the detection of an imported BSE-infected cow does not, in our view, alter the conclusions of our original risk analysis, it did raise consciousness of BSE challenges that might exist for the United States. As noted above, the United States is redirecting resources toward planning, implementation, and enforcement of measures to enhance BSE surveillance and to protect human and animal health.

Both the USDA and the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) have either put in place or have announced additional safety measures in response to the detection of the case of BSE.[4] USDA requested a review of the U.S. BSE program by an international scientific panel and has received its recommendations. Although the U.S. Government has already taken significant actions that directly address many of the expert panel's recommendations, and is considering policy options to further address the recommendations, we believe the recent detection and investigation of the BSE case in a cow of Canadian origin demonstrate the effective nature of the surveillance and response measures currently in place.

The risk analysis we conducted for our November 2003 proposal was developed after, and took into consideration, the diagnosis of BSE in a cow in Canada in May 2003. In that analysis, we considered the sum total of the control mechanisms (*e.g.*, effectiveness of surveillance, import controls, and feed ban) in place in Canada at the time of the diagnosis and the actions taken by Canada following that diagnosis. The conclusion of our analysis was that those control mechanisms and actions were adequate to mitigate the risk of BSE being brought into the United States from Canada through the importation of ruminants and ruminant products, provided the conditions of the proposed rule were met. Enhancements the United States has made to its own BSE control program since the December 2003 detection—such as elimination of nonambulatory disabled cattle from the food chain, the removal of "specified risk materials" from human food, and increased surveillance—and the adoption of equivalent measures by Canada, continue to support our basic conclusions that ruminants and ruminant products can be safely imported.

Requirements of the November 2003 Proposed Rule in Light of Recent U.S. Measures

As noted above, the USDA has responded to the detection of the case of BSE in an imported BSE-infected cow with significant BSE risk mitigation measures in this country. Perhaps most importantly, parts of slaughtered animals that are considered at particular risk of containing the BSE agent in an infected animal (referred to as "specified risk materials" or "SRM's") have been banned from the human food supply. The USDA's Food Safety and Inspection Service (FSIS) has established as SRM's the skull, brain, trigeminal ganglia, eyes, vertebral column, spinal cord, and dorsal root ganglia of cattle over 30 months of age, as well as the tonsils and small intestine of cattle of all ages, and prohibits such SRM's from the human food supply. In addition, FSIS has, among other measures, required that nonambulatory, disabled cattle be excluded from the food supply. The Canadian Government has established similar safeguards in Canada.

The measures taken by FSIS do not restrict the slaughter of cattle in the United States based on the age of the animals—*i.e.*, meat from cattle 30 months of age or older will continue to be allowed into the human food supply. However, measures are in place to ensure that SRM's from such cattle do not enter the food supply. We now believe it would not be necessary to require that beef imported from BSE minimal-risk regions be derived only from cattle less than 30 months of age, provided equivalent measures are in place to ensure that SRM's are removed when the animals are slaughtered, and that such other measures as are necessary are in place. We believe such measures are already being taken in Canada. We invite comment from the public regarding this change to the provisions we proposed in November 2003 regarding the importation of beef.

With regard to the importation of live animals from BSE minimal-risk regions, APHIS is currently evaluating the appropriate approach regarding such animals and intends to address that issue in a supplemental rulemaking proposal in the **Federal Register**.

Extension of Comment Period

In order to give interested persons an opportunity to comment on our November 2003 proposed rule in light of recent developments described above, we are reopening the comment period on Docket No. 03–080–1 for an additional 30 days. We will also

[3] These measures are discussed in greater detail in our explanatory note to the risk analysis we conducted for our November 2003 proposed rule, and may also be viewed on the Internet by accessing the CFIA Web site at *http:\\www.inspection.gc.ca.*

[4] A listing of each of the measures taken or announced is included in our explanatory note document. Instructions for accessing the explanatory note document are included in this notice under the heading "How to View APHIS Risk Documents Related to this Notice."

consider all comments received between January 6, 2004 (the day after the close of the original comment period), and the date of this notice.

How To View APHIS Risk Documents Related to This Notice

You may view the original analysis we conducted for our November 2003 proposed rule and the explanatory note to that analysis in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). You may also request a copy of each document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the analysis and the explanatory note when requesting copies. You may also view the analysis and the explanatory note[5] on the Internet by accessing the APHIS Web site at *http://www.aphis.usda.gov*. At the APHIS website, click on the "Hot Issues" button. On the next screen, click on the listing for "Bovine Spongiform Encephalopathy (BSE)." On the next screen, click on the listing for "BSE Canada." On the next screen, click on the listing for either "Risk Analysis" or "Explanatory Note: Risk Analysis."

Authority: 7 U.S.C. 450, 1622, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 4th day of March, 2004.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–5265 Filed 3–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes. This proposal would require repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. This action is necessary to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–198–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–198–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–198–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has received the results of studies, done by Boeing, on the wiring of the static port heaters found on McDonnell Douglas Model

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[5] The analysis is titled "Risk Analysis: BSE Risk from Importation of Designated Ruminants and Ruminant Products from Canada into the United States." The explanatory note is titled "Explanatory Note-Risk Analysis: BSE Risk from Importation of Designated Ruminants and Ruminant Products from Canada into the United States."

DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes. The results revealed that the wiring of the static port heater assembly may be damaged. This condition, if not corrected, could result in an electrical short of the static port heater and consequent sparking and ignition of the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area.

The static port heater on McDonnell Douglas Model MD–90–30 airplanes are identical to those on the affected Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; and Model MD–88 airplanes. Therefore, all of these models are subject to the same unsafe condition.

Other Related Rulemaking

The FAA is planning to address the identified unsafe condition of McDonnell Douglas Model MD–90–30 airplanes in a separate rulemaking action.

The FAA, in conjunction with Boeing and operators of Model DC–9 series airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

On May 16, 2001, the FAA issued AD 2001–10–10, amendment 39–12236 (66 FR 28643, May 24, 2001), applicable to certain McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes, and Model MD–88 airplanes to require an inspection of the wiring of the primary and alternate static port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters; and corrective actions, if necessary. That action was prompted by an in-flight incident of smoke in the cabin on a McDonnell Douglas Model MD–88 airplane. The requirements of that AD are intended to ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater. This proposed AD does not affect the requirements of AD 2001–10–10.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003, which describes procedures for a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; a functional test of the left and right primary and alternate static port heater assemblies; and replacement of the static port heater assembly with a new or serviceable static port heater assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Differences Between Service Bulletin and Proposed AD

Operators should note that while the service bulletin specifies a one-time general visual inspection and functional test of the left and right primary and alternate static port heater assemblies, this proposed AD would also require repeating the general visual inspection and functional test of the left and right primary and alternate static port heater assemblies every 48 months. In developing an appropriate inspection/test times for this AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, we find that a repetitive interval of 48 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

In addition to the actions specified in the service bulletin, this proposed AD would require a general visual inspection of the left and right primary and alternate static port heater and insulator for proper installation. The MD–80 Airplane Maintenance Manual (AMM) 34–11–00 previously contained incorrect information for stacking of the heater and insulator. Boeing has since revised the AMM to correct the error and has informed operators of the error. One operator investigated and found several heaters that were incorrectly stacked. An incorrectly stacked heater will cause higher than normal operating temperature locally in the blanket, which would lead to quicker deterioration and aging of the rubber, causing it to crack and lead to electrical shorting or arcing. To detect and correct this condition on Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) airplanes; and Model MD–88 airplanes; we added the inspection for proper installation, per the MD–80 AMM 30–32–00, to the proposed AD.

The additional actions have been coordinated and concurred with by the manufacturer.

Cost Impact

There are approximately 1,836 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,125 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for wire damage and functional test, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for wire damage and functional test on U.S. operators is estimated to be $73,125, or $65 per airplane, per inspection cycle.

It would also take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for proper installation, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for proper installation on U.S. operators is estimated to be $73,125, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2003–NM–198–AD.

Applicability: McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes, and Model MD–88 airplanes; as listed in Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin DC9–30–097, Revision 01, dated January 24, 2003.

Inspection and Functional Test

(b) Within 18 months after the effective date of this AD, do the actions in paragraphs (b)(1) and (b)(2) of this AD. Repeat the actions in paragraph (b)(1) of this AD thereafter at intervals not to exceed 48 months.

(1) Perform a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; and a functional test of the left and right primary and alternate static port heater assemblies; in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Perform a general visual inspection of the left and right primary and alternate static port heater and insulator for proper installation per Airplane Maintenance Manual (AMM) 30–32–00. Before further flight, correct any improper installation per AMM 30–32–00.

Wire Damage or Heater Failures

(c) If wire damage is found and/or the heater assembly fails the functional test, during the general visual inspection and functional test required by paragraph (b)(1) of this AD: Before further flight, replace the damaged or inoperative static port heater assembly with a new or serviceable static port heater assembly.

Actions Accomplished per Previous Issue of Service Bulletin

(d) Inspections, functional tests, and corrective actions accomplished before the effective date of this AD per Boeing Service Bulletin DC9–30–097, original issue, dated February 15, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on March 1, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5072 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This proposal would require repetitive inspections and functional tests of the static port heater assemblies, an inspection of the static port heaters and insulators, and corrective actions if necessary. This action is necessary to prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by April 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–194–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–194–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has received the results of studies, done by Boeing, on the wiring of the static port heaters found on McDonnell Douglas Model MD–90–30 airplanes, as well as on Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; and Model MD–88 airplanes. The results revealed that the wiring of the static port heater assembly may be damaged. This condition, if not corrected, could result in an electrical short of the static port heater and consequent sparking and ignition of the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area.

The static port heater on McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; and Model MD–88 airplanes are identical to those on the affected Model MD–90–30 airplanes. Therefore, all of these models are subject to the same unsafe condition.

Other Related Rulemaking

The FAA is planning to address the identified unsafe condition of McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; and Model MD–88 airplanes in a separate rulemaking action.

The FAA, in conjunction with Boeing and operators of Model MD–90–30 airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

On May 16, 2001, the FAA issued AD 2001–10–11, amendment 39–12237 (66 FR 28651, May 24, 2001), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, to require an inspection of the wiring of the primary and alternate static port heaters for chafing, loose connections, and evidence of arcing, and to determine what type of insulation blanket is installed in the area of the static port heaters; and corrective actions, if necessary. That action was prompted by an in-flight incident of smoke in the cabin on a McDonnell Douglas Model MD–88 airplane. The requirements of that AD are intended to ensure that insulation blankets constructed of metallized Mylar™ are removed or protected from the area of the static port heater. This proposed AD does not affect the requirements of AD 2001–10–11.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin MD90–30–026, dated February 15, 2002, which describes procedures for a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; a functional test of the left and right primary and alternate static port heater assemblies; and replacement of the static port heater assembly with a new or serviceable static port heater assembly. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between Service Bulletin and Proposed AD

Operators should note that while the service bulletin specifies a one-time general visual inspection and functional test of the left and right primary and alternate static port heater assemblies, this proposed AD would also require repeating the general visual inspection and functional test of the left and right primary and alternate static port heater assemblies every 48 months. In developing an appropriate inspection/test times for this AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (1 hour). In light of all of these factors, we find that a repetitive interval of 48 months represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

In addition to the actions specified in the service bulletin, this proposed AD would require a general visual inspection of the left and right primary and alternate static port heater and

insulator for proper installation. The MD–80 Airplane Maintenance Manual (AMM) 34–11–00 previously contained incorrect information for stacking of the heater and insulator. Boeing has since revised the AMM to correct the error and has informed operators of the error. One operator investigated and found several heaters that were incorrectly stacked. An incorrectly stacked heater will cause higher than normal operating temperature locally in the blanket, which would lead to quicker deterioration and aging of the rubber, causing it to crack and lead to electrical shorting or arcing. To detect and correct this condition on the Model MD–90–30 airplanes, we added the inspection for proper installation, per the MD–90 AMM 30–32–00, to the proposed AD.

The additional actions have been coordinated and concurred with by the manufacturer.

Cost Impact

There are approximately 116 airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for wire damage and functional test, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for wire damage and functional test on U.S. operators is estimated to be $1,430, or $65 per airplane, per inspection cycle.

It would also take approximately 1 work hour per airplane to accomplish the proposed general visual inspection for proper installation, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection for proper installation on U.S. operators is estimated to be $1,430, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2003–NM–194–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Service Bulletin MD90–30–026, dated February 15, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical short of the static port heater from sparking and igniting the insulation blanket adjacent to the static port heater, which could result in smoke and/or fire in the cabin area, accomplish the following:

Service Bulletin References

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin MD90–30–026, dated February 15, 2002.

Inspection and Functional Test

(b) Within 18 months after the effective date of this AD, do the actions in paragraphs (b)(1) and (b)(2) of this AD. Repeat the actions in paragraph (b)(1) of this AD thereafter at intervals not to exceed 48 months.

(1) Perform a general visual inspection of the left and right primary and alternate static port heater assemblies for wire damage; and perform a functional test of the left and right primary and alternate static port heater assemblies; in accordance with the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Perform a general visual inspection of the left and right primary and alternate static port heater and insulator for proper installation per Airplane Maintenance Manual (AMM) 30–32–00. Before further flight, correct any improper installation per AMM 30–32–00.

Wire Damage or Heater Failures

(c) If wire damage is found and/or the heater assembly fails the functional test, during the general visual inspection and functional test required by paragraph (b)(1) of this AD: Before further flight, replace the damaged or inoperative static port heater assembly with a new or serviceable static port heater assembly in accordance with the service bulletin.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on March 1, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5073 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: The FAA proposes to revise an earlier NPRM airworthiness directive (AD) action that applies to certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. That proposed AD would have revised AD 2002–22–17, which currently requires you to repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks on all Cessna Models 208 and 208B airplanes. The proposed AD would have provided the option of installing a newly designed bellcrank to increase the life limits and terminate the repetitive inspections. AD 2003–21–04 also requires inspections of the inboard forward flap bellcranks on these airplanes. The FAA has determined that additional inspections of the bellcranks are necessary on Cessna Models 208 and 208B airplanes. We believe that it would be less confusing if all of these actions were in one AD. Therefore, FAA proposes to supersede AD 2002–22–17 and AD 2003–21–04. Since the added actions from AD 2003–21–04 and other proposed inspections impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: We must receive any comments on this proposed AD by May 17, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2002–CE–23–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2002–CE–23–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The need to reduce the life limit and repetitively inspect the inboard forward flap bellcrank on Cessna Models 208 and 208A airplanes caused us to issue AD 2002–22–17, Amendment 29–12944 (67 FR 68508, November 12, 2002).

Since FAA issued AD 2002–22–17, Cessna has designed a new flap bellcrank, part number (P/N) 2622311–7, with a life limit of 40,000 landings (instead of 7,000 landings). The new flap bellcrank (P/N 2622311–7) may be substituted for the older flap bellcranks, P/N 2622281–2, 2622281–12, or 2692001–2. Installation of this new flap bellcrank will eliminate the need for repetitive inspections.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 208 and 208B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 28, 2003 (68 FR 44252). The NPRM proposed to revise AD 2002–22–17 by proposing a new AD that would:

—Retain the requirements of AD 2002–22–17; and

—Provide the option of installing the 40,000 landings life limit bellcranks.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in developing this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

What Events Have Caused FAA To Issue a Supplemental NPRM?

The FAA recently issued AD 2003–21–04, Amendment 39–13339 (68 FR 59707, October 17, 2003) to require you to immediately inspect certain inboard forward flap bellcranks for cracks, deformation, and missing/incomplete welds. If cracks, deformation, or missing/incomplete welds are found, the AD would require you to immediately replace the flap bellcrank or temporarily incorporate certain flap limitations.

In addition, FAA has identified other bellcranks within the flap system that require inspection. The FAA has determined that all of the inspections and replacements of the bellcranks should be included in one AD. These inspections are referenced in Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.

FAA's Determination and Requirements of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop

on other Cessna Models 208 and 208B airplanes of the same type design that are on the U.S. registry;
—We should combine the actions of AD 2002–22–17, AD 2003–21–04, and those referenced in Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003; and
—We should take AD action to correct this unsafe condition.

The Supplemental NPRM

How Will the Changes to the NPRM Impact the Public?

Adding the inspection and replacement requirements from both AD 2003–21–04 and Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003, goes beyond the scope of what was originally proposed in the NPRM. Therefore, we are reopening the comment period and allowing the public the chance to comment on these additional actions.

What Are the Provisions of the Supplemental NPRM?

The proposed AD would supersede AD 2002–22–17 and AD 2003–21–04 by requiring you to:
—Do all current requirements of AD 2002–22–17;
—Provide the option of installing the 40,000 landings life limit bellcranks;
—Inspect all bellcranks for cracks, deformation, and missing/incomplete welds; and
—If cracks, deformation, or missing/incomplete welds are found, the AD would require you to immediately replace the bellcrank or temporarily incorporate certain flap limitations.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 1,300 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

For the proposed actions retained from AD 2003–21–04, and the addition of all bellcranks to the applicability, we estimate the following costs to do this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	No cost for parts.	$130	$130 × 1,300 for = $169,000.

We estimate the following costs to do any necessary replacements of the right inboard forward flap bellcrank (P/N 2622311–7, alternate P/N 2622311–16) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $65 per hour = $195	$1,845	$195 + $1,845 = $2,040.

We estimate the following costs to do any necessary replacements of the left inboard forward flap bellcrank (P/N 2622281–1) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65	$1,201	$65 + $1,201 = $1,266.

We estimate the following costs to do any necessary replacements of the right inboard aft flap bellcrank (P/N 2622267–8) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65.	$1,273	$65 + $1,273 = $1,338.

We estimate the following costs to do any necessary replacements of the left inboard aft flap bellcrank (P/N 2622267–7) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65.	$2,098	$65 + $2,098 = $2,163.

We estimate the following costs to do any necessary replacements of the left outboard flap bellcrank (P/N 2622091–17) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65.	$627	$65 + $627 = $692.

We estimate the following costs to do any necessary replacements of the right outboard flap bellcrank (P/N 2622091–18) that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 workhour × $65 per hour = $65.	$661	$65 + $661 = $726.

For the proposed requirements from AD 2002–22–17 that you repetitively inspect the inboard forward flap bellcranks for cracks, eventually replace these bellcranks, and provides the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections, we estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65.	No cost for parts.	$65	$65 × 1,300 = $84,500.

We estimate the following costs to do any proposed replacements using the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) that will be required based on the proposed inspection or the reduced life limits:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $65 per hour = $195.	$1,793	$195 + $1,793 = $1,988	$1,988 × 1,300 = $2,584,400.

We estimate the following costs to do any proposed replacements using the new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N) that will be required based on the proposed inspection or the reduced life limits. We have no way of determining the number of airplanes that may need this proposed replacement with the new flap bellcrank:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $65 per hour = $195.	$1,845	$195 + $1,845 = $2,040.

What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impacts of AD 2003–21–04 and AD 2002–22–17?

AD 2003–21–04 already established the inspection and replacement of the right inboard forward flap bellcrank assembly on the affected airplanes. Therefore, the replacement is already required through that AD. The only difference in the cost impact on the public of this proposed AD and AD 2003–21–04 is the additional cost for the inspection of all other bellcranks, and, if necessary, replacement.

AD 2002–22–17 already established the life limit for the flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) on the affected airplanes. Therefore, the replacement is already required through that AD. The only difference in the cost impact upon the public of this AD and AD 2002–22–17 is the additional $52 cost difference for the new flap bellcrank.

Regulatory Findings

Would This Proposed AD Impact Various Entities?

We have determined that this proposed AD would not have federalism implications under Executive Order

13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2002–CE–23–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing both Airworthiness Directive (AD) 2002–22–17, Amendment 39–12944, and AD 2003–21–04, Amendment 39–13339; and by adding the following new AD:

Cessna Aircraft Company: Docket No. 2002–CE–23–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 17, 2004.

What Other ADs Are Affected By This Action?

(b) This AD supersedes AD 2002–22–17 and AD 2003–21–04.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

(1) Group 1 (retains the actions from AD 2003–21–04, and adds all flap bellcranks to the applicability):

Model	Serial Numbers
208	20800001 through 20800369.
208B	208B0001 through 208B1014, 208B1017, 208B1018, 208B1020 through 208B1024, 208B1026, and 208B1029 through 208B1033.

(2) Group 2 (retains the requirement of AD 2002–22–17 that you repetitively inspect the inboard forward flap bellcranks for cracks, eventually replace these bellcranks, and provides the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections): Models 208 and 208B airplanes, all serial numbers.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to prevent failure of any bellcrank due to cracks, deformation, or missing/incomplete welds. This failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

What Must I Do To Address This Problem for Group 1 Airplanes?

(e) To address this problem for Group 1 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the right inboard forward flap bellcrank assembly for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following part numbers (P/N): (i) P/N 2622083–18; (ii) P/N 2622281–2; (iii) P/N 2692001–2; or (iv) P/N 2622281–12.	Within the next 25 landings after October 21, 2003 (the effective date of AD 2003–21–04). If landings are unknown, then you may multiply hours time-in-service (TIS) by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings.	Use a flashlight and a mirror as necessary to see if welds (1), (4), (5), and (6) exist and are at least 0.06-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 1, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.
(2) Inspect the left inboard forward bellcrank for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following part P/Ns: (i) P/N 2622083–15; or (ii) P/N 2622281–1.	Within the next 25 landings after the effective date of this AD. If landings are unknown, then you may multiply hours TIS by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings.	Use a flashlight and a mirror as necessary to see if welds (1) through (4) exist and are at least 0.06-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 2, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.
(3) Inspect the inboard aft bellcrank for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following P/Ns: (i) P/N 2622267–1; or (ii) P/N 2622267–2; (iii) P/N 2622267–7; (iv) P/N 2622267–8; (v) P/N 2622083–1; or (vi) P/N 2622083–2.	Within the next 25 landings after the effective date of this AD. If landings are unknown, then you may multiply hours TIS by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings.	Use a flashlight and a mirror as necessary to see if welds (1), (2), (4), and (5) exist and are at least 0.05-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 3, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.

Actions	Compliance	Procedures
(4) Inspect the outboard bellcrank for cracks, deformation, and missing/incomplete welds. The affected flap bellcrank incorporates one of the following P/Ns: (i) P/N 2622091–1; or (ii) P/N 2622091–2; (iii) P/N 2622091–9; (iv) P/N 2622091–10; (v) P/N 2622091–17; or (iv) P/N 2622091–18.	Within the next 25 landings after the effective date of this AD. If landings are unknown, then you may multiply hours TIS by 1.25. For the purposes of this AD, you may substitute 20 hours TIS for 25 landings.	Use a flashlight and a mirror as necessary to see if welds (1) through (4) exist and are at least 0.05-inch thick around the full circumference of the shaft. These welds and the inspection procedures are referenced in Figure 4, details A, B, and C; and Views A–A and B–B of Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.
(5) If you find cracks, deformation, or missing/incomplete welds during the inspection required by paragraphs (e)(1) through (e)(4) of this AD, then do one of the following: (i) Replace the bellcrank with a new bellcrank; or (ii) Prohibit the use of flaps through the actions of paragraph (g) of this AD.	Replace or do the flap prohibition actions before further flight after the inspection required in paragraphs (e)(1) through (e)(4) of this AD. If you choose the flap prohibition, you must have the replacement done within 200 hours TIS after the inspection required by paragraphs (e)(1) through (e)(4) of this AD. After the new flap bellcrank is installed, the Temporary Revision 208PHTR02, dated September 23, 2003, should be removed.	*Replacement:* Use the Accomplishment Instructions of Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003, or refer to the Maintenance Manual, Chapter 27, Flap System—Maintenance Practices, for bellcrank removal and installation procedures *Flap Prohibition:* Use the information in the Temporary Revision 208PHTR02, dated September 23, 2003. The action is referenced in Cessna Caravan Service Bulletin CAB03–11, Revision 1, dated September 24, 2003.

What Must I Do To Address This Problem for Group 2 Airplanes?

(f) To address this problem for Group 2 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Repetitive Inspections:* Inspect, using eddy current methods, any inboard forward flap bellcrank P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) for cracks.	Initially inspect upon the accumulation of 4,000 landings on the bellcrank or within the next 250 landings after December 31, 2002 (the effective date of AD 2002–22–17), whichever occurs later. Repetitively inspect thereafter at every 500 landings until 7,000 landings are accumulated at which time you must replace as required in paragraphs (f)(2) and (f)(3) of this AD. No repetitive inspections are required when a P/N 2622311–7 (or FAA-approved equivalent P/N) inboard forward flap bellcrank is installed.	Follow the Inspection Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual.
(2) *Initial Replacement:* Replace any inboard forward flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) with either: (i) the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N); or (ii) a new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N).	If cracks are found, replace or do the flap prohibition actions before further flight after the inspection required in paragraphs (f)(1) of this AD. If you choose the flap prohibition, you must have the replacement done within 200 hours TIS after the inspection required by paragraphs (f)(1) of this AD. After the new flap bellcrank is installed, the Temporary Revision 208PHTR02, dated September 23, 2003, should be removed. If cracks are not found, initially replace at whichever occurs later: Upon the accumulation of 7,000 landings on the bellcrank or within the next 75 landings after December 31, 2002 (the effective date of AD 2002–22–17).	*Replacement:* For flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N): Follow the Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual. For new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N): Follow the Accomplishment Instructions of Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No. SK203–148A, dated January 27, 2003. *Flap Prohibition:* Use the information in the Temporary Revision 208PHTR02, dated September 23, 2003.

Actions	Compliance	Procedures
(3) *Life Limits (Repetitive Replacements):* (i) The life limit for the inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) is 7,000 landings. Repetitive inspections every 500 landings begin at 4,000 landings (see paragraph (f)(1) of this AD). (ii) The life limit for the inboard forward flap bellcranks (P/N 26222311–7 or FAA-approved equivalent P/N) is 40,000 landings. No repetitive inspections are required on these bellcranks.	Replace at the applicable referenced life limits	Use the service information referenced in paragraph (f)(2) of this AD.

Note 1: Inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, or 2692001–2) with 7,000 landings or more do not have to be replaced until 75 landings after December 31, 2002 (the effective date of AD 2002–22–17), unless found cracked.

Note 2: The compliance times of this AD are presented in landings instead of hours TIS. If the number of landings is unknown, hours TIS may be used by multiplying the number of hours TIS by 1.25.

What Are the Actions I Must Do if I Choose the Flap Prohibition Option?

(g) Insert Temporary Revision, 208PHTR02, dated September 23, 2003, into the applicable pilot's operating handbook and FAA-approved airplane flight manual. The owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may incorporate this information into the AFM. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(1) This procedure applies to Cessna Models 208 and 208B landplanes. For other FAA-approved aircraft configurations (for example, amphibian, floatplanes, and so forth), you must operate with flaps up per the appropriate airplane flight manual supplement.

(2) This procedure allows for applicable deviation from the Master Minimum Equipment List (MMEL) for these airplanes until the flap bell crank is replaced. The applicable MMEL requirements go back into effect at the time of flap bell crank replacement.

May I Request an Alternative Method of Compliance?

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.13. Send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4107.

(i) Alternative methods of compliance approved under AD 2002–22–17 and AD 2003–21–04 are not approved for this AD.

May I Get Copies of the Documents Referenced in This AD?

(j) You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 2, 2004.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5130 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7632–9]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 40

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 11 new sites to the NPL; all to the General Superfund Section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before May 7, 2004.

ADDRESSES: By electronic access: Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select "search", and then key Docket ID No. SFUND–2004–0004. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, Attention Docket ID No. SFUND–2004–0004.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND–2004–0004. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

By E-Mail: Comments in ASCII format only may be mailed directly to *superfund.docket@epa.gov*. Cite the Docket ID No. SFUND–2004–0004 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets, and made

available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Superfund Remediation and Technology Innovation (Mail Code 5204G); U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high

on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (*see* 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 29, 2003 (68 FR 55875).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of February 25, 2004, the Agency has deleted 278 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR

55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of February 25, 2004, EPA has deleted 43 portions of 37 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) The site qualifies for deletion from the NPL.

As of February 25, 2004, there are a total of 892 sites on the CCL. For the most up-to-date information on the CCL, *see* EPA's Internet site at *http://www.epa.gov/superfund.*

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Debra Ehlert, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR-SA, Denver, CO 80202–2466; 303/312–6108.

Jere Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3094.

Tara Martich, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–110, Seattle, WA 98101; 206/553–0039.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

You may also access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* You may use EPA Dockets at *http://www.epa.gov/edocket* to access the index listing of the contents of the Headquarters docket, and to access those documents in the Headquarters docket. Once in the system, select "search", then key in the Docket ID No. SFUND–2004–0004. Please note that there are differences between the Headquarters Docket and the Regional Dockets and those differences are outlined below.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed sites; a Documentation Record for the sites describing the information used to compute the score; information for any sites affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. For additional information about EPA's electronic public docket, visit EPA Dockets online at *http://www.epa.gov/edocket* or see the May 31, 2002 **Federal Register** (67 FR 38102).

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 11 new sites to the NPL; all to the General Superfund Section of the NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

B. Status of NPL

With this proposal of 11 new sites, there are now 65 sites proposed and awaiting final agency action, 59 in the General Superfund Section and 6 in the Federal Facilities Section. There are currently 1,240 final sites, 1,082 in the General Superfund Section and 158 in the Federal Facilities Section. Final and proposed sites now total 1,305. (These numbers reflect the status of sites as of February 25, 2004. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might

significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. How Has EPA Complied With the Regulatory Flexibility Act (RFA)?

This proposed rule listing sites on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are The Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

XIII. Executive Order 13175

A. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

B. Does Executive Order 13175 Apply to This Proposed Rule?

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

XIV. Executive Order 13211

A. What Is Executive Order 13211?

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action."

B. Is This Rule Subject to Executive Order 13211?

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. (*See* discussion of Executive Order 12866 above.)

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 40, GENERAL SUPERFUND SECTION

State	Site name	City/county
IN	Jacobsville Neighborhood Soil Contamination	Evansville.
LA	Devil's Swamp—Ewell Property	Scotlandville.
MO	Annapolis Lead Mine	Annapolis.
MS	Picayune Wood Treating	Picayune.
NM	Grants Chlorinated Solvents Plume	Grants.
NY	Diaz Chemical Corporation	Holley.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 40, GENERAL SUPERFUND SECTION—Continued

State	Site name	City/county
NY	Peninsula Boulevard Ground Water Plume	Hewlett.
PA	Ryeland Road Arsenic	Heidelberg Township.
PR	Cidra Ground Water Contamination	Cidra.
VT	Pike Hill Copper Mine	Corinth.
WV	Ravenswood PCE Ground Water Plume	Ravenswood.

Number of Sites Proposed to General Superfund Section: 11.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 1, 2004.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 04–5109 Filed 3–5–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 7, 2004, at the US Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 7, 2004, beginning at 1 p.m. and ending at 5:30 p.m.

ADDRESSES: The meeting will be held at the US Forest Service Office, Emerald Bay Conference Room 35 College Drive, South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 534–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Report on transportation briefing with Christine Johnson of the FHWA; (2) update on Southern Nevada Public Land Management Act (SNPLMA); (3) budget subcommittee recommendations on SNPLMA projects; (4) public comment; and (5) LTFAC recommendations on SNPLMA projects. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: March 1, 2004.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. 04–5059 Filed 3–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, March 15, 2004. The meeting will include routine business, a discussion of larger scale projects, and the review and recommendation for implementation of submitted project proposals.

DATES: The meeting will be held March 15, 2004, from 4 p.m. until 7 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: February 27, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–5058 Filed 3–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Rouge/Umpqua Resource Advisory Committee, Roseburg, OR, Forest Services, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Rogue/Umpqua Resources Advisory Committee will meet Wednesday, March 31, 2004, in Roseburg, Oregon, for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on March 31, 2004, begins at 1 p.m. at the Roseburg Bureau of Land Management Office, 777 NW. Garden Valley Blvd, Roseburg, OR. Agenda topics will include: (1) Review and adopt previous meetings minutes, (2) review and recommend projects to be funded to replace a cancelled 2004 project, and (3) public forum at 1:45 p.m.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Jim Caplan, Umpqua National Forest; 2900 NW. Stewart Parkway, Roseburg, Oregon 97470; (541) 580–0839.

Dated: March 1, 2004.

John Sloan,

Acting Forest Supervisor, Umpqua National Forest.

[FR Doc. 04–5071 Filed 3–5–04; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Meeting

Date and Time: March 10, 2004, 1 p.m.–4:15 p.m.

Place: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-

military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6).)

Contact Person for More Information: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: March 1, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–5213 Filed 3–3–04; 4:15 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–867

Automotive Replacement Glass Windshields from the People's Republic of China: Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances review of the antidumping order on Automotive Replacement Glass ("ARG") Windshields from the People's Republic of China ("PRC"). The review will be conducted to determine whether Shenzhen CSG Automotive Glass Co., Ltd. ("Shenzhen CSG") is the successor–in-interest to Shenzhen Benxun AutoGlass Co., Ltd. ("Shenzhun Benxun").

EFFECTIVE DATE: March 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3818 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2002, the Department of Commerce ("the Department") published in the **Federal Register** the antidumping duty order on automotive replacement glass ("ARG") windshields from the PRC. *See Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002). On April 7, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on ARG windshields from the PRC for the period September 19, 2001 through March 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 16761 (April 7, 2003). On April 30, 2003, the Department received a letter on behalf of Shenzhen CSG Automotive Glass Co., Ltd. ("Shenzhen CSG") requesting an administrative review of its sales and entries of subject merchandise. In its request, Shenzhen CSG indicated that it had undergone a name change, and that it had formerly been known as Shenzhen Benxun AutoGlass Co., Ltd. ("Shenzhen Benxun"). Shenzhen Benxun was a respondent in the original investigation of this case. The request for review did not include a request for a changed circumstance review to determine whether Shenzhen CSG is in fact a successor in interest to Shenzhen Benxun. Further, the Department did not advise Shenzhen CSG or Shenzhen Benxun that a successor in interest determination must be made before Shenzhen CSG would be entitled to Shenzhen Benxun's cash deposit rate. On May 21, 2003, in response to timely requests from respondents subject to the order on ARG windshields from the PRC, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by ten respondents, including "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)" of ARG windshields from the PRC for the period September 19, 2001 through March 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003) ("Initiation Notice").

On June 3, 2003, the Department issued antidumping duty questionnaires to the respondents, including "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)". On July 8, 2003, we received a letter from "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)" withdrawing its request for an administrative review of sales and entries of subject merchandise exported by it and covered by the antidumping duty order on ARG windshields from the PRC. On September 8, 2003, the Department published in the **Federal Register** a notice of partial rescission of the administrative review on ARG windshields from the PRC, which included a rescission of the administrative review of sales and entries from "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)". On December 29, 2003, the Department instructed Customs and Border Protection ("Customs") to liquidate entries from Shenzhen Benxun at its cash deposit rate of 9.84%, but to liquidate entries from Shenzhen CSG at the China–wide rate of 124.5% because the Department never had an opportunity to determine whether Shenzhen CSG is a successor in interest to Shenzhen Benxun. On January 12, 2004, the Department received a letter on behalf of "Shenzhen CSG Automotive Glass Co., Ltd. (formerly known as Shenzhen Benxun AutoGlass Co., Ltd.)" requesting that the Department amend instructions sent to Customs that direct Customs to liquidate all of Shenzhen CSG's entries at the China wide–rate. Shenzhen CSG asserts that Shenzhen Benxun changed its name to Shenzhen CSG and that entries from Shenzhen CSG should be entitled to Shenzhen Benxun's cash deposit rate.

Scope

The products covered by this review are ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this review are currently classifiable under

subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (HTSUS). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 351.216 of the Department's regulations, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Shenzhen CSG claiming to show that Shenzhen CSG is the successor–in-interest to Shenzhen Benxun shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c) (2003).

In accordance with section 751(b) of the Tariff Act and 351.216 of the Department's regulations, the Department is initiating a changed circumstances review to determine whether Shenzhun CSG is the successor in interest to Shenzhun Benxun. In antidumping duty changed circumstances reviews involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management, (2) organizational structure, (3) ownership, (4) production facilities, (5) supplier relationships, and (6) customer base. *See, e.g., Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 66 FR 67513, 67515 (December 31, 2001) and *Brass Sheet and Strip from Canada; Final Results of Changed Circumstances Review*, 57 FR 20460, 20461 (May 13, 1992). While none of these factors is dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is similar to that of the predecessor. *See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6946 (February 14, 1994). Thus, if evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same entity as the former company, the Department will treat the new company as the successor–in-interest to the predecessor. *See Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with section 351.216(c), and 351.221(b)(4) and 351.221(c)(3)(i) of the Department's regulations. This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date of publication of this notice.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this review. Any changes if appropriate, will be made pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and section 351.221(b)(1) of the Department's regulations.

Dated: March 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5140 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut–to-Length Carbon–Quality Steel Plate Products from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Howard Smith, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2769 or (202) 482–5193, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On March 25, 2003, the Department initiated an administrative review of certain cut–to-length carbon–quality steel plate products (steel plate) from the Republic of Korea, covering the period February 1, 2002 through January 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (March 25, 2003). On November 6, 2003, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on steel plate from Korea. *See Certain Cut–to-Length Carbon–Quality Steel Plate Products From the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 62770 (November 6, 2003). The final results are currently due no later than March 5, 2004.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results by 60 days until no later than May 4, 2004. *See* Decision Memorandum from Thomas F. Futtner to Holly A. Kuga, dated concurrently with this notice, which is on file in the

Central Records Unit, Room B–099 of the Department's main building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 2, 2004.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 04–5141 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke, in-Part: Mechanical Transfer Presses from Japan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan in response to a request by Hitachi Zosen Corporation (HZC) and its subsidiary Hitachi Zosen Fukui Corporation, doing business as H&F Corporation (H&F). This review covers entries of this merchandise to the United States during the period of February 1, 2002 through January 31, 2003. We preliminarily determine that U.S. sales were made at prices below normal value (NV). Because we have determined that U.S. sales were made at prices below NV, we also preliminarily determine that this order should not be revoked with respect to HZC/H&F. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between export price (EP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: March 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Sally Gannon, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5255 or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on MTPs from Japan on February 16, 1990 (55 FR 5642). On February 24, 2003, the Department received a timely request for an administrative review of the antidumping duty order on MTPs from HZC and its subsidiary, H&F. On February 27, 2002, the Department received a timely request from the petitioner, IHI-Verson Press Technology, LLC, for an administrative review of HZC and H&F. On February 28, 2003, HZC/H&F properly filed a timely request that the Department revoke the order with respect to its sales of MTPs in accordance with section 351.222(e) of the Department's regulations. On March 25, 2003, we published a notice initiating an administrative review of MTPs (68 FR 14394). The review covers H&F, which manufactured MTPs during the period of review (POR), and HZC, the parent company and nominal reseller, which owns a controlling interest in H&F. For purposes of all prior administrative reviews in which HZC and H&F have participated, we have treated these companies as affiliated and collapsed them.

Due to complicated issues in this case, on October 15, 2003, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until no later than February 28, 2004. *See Mechanical Transfer Presses From Japan: Extension of Time Limit for Preliminary Results of Antidumping Administrative Review*, 68 FR 59365 (October 15, 2003).

Scope of the Antidumping Duty Order

Imports covered by this antidumping duty order include mechanical transfer presses, currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8462.10.0035, 8466.94.6540 and 8466.94.8540. The HTSUS subheadings are provided for convenience and CBP purposes only. The written description of the scope of this order is dispositive. The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

The Department published in the **Federal Register** several notices of scope rulings with respect to MTPs from Japan, determining that (1) spare and replacement parts are outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 19602 (May 7, 1992)); (2) a destack feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (*see Notice of Scope Rulings*, 57 FR 32973 (July 24, 1992)); (3) the FMX cold forging press is within the scope of the order (*see Notice of Scope Rulings*, 59 FR 8910 (February 24, 1994)); and (4) certain mechanical transfer press parts exported from Japan are outside the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1997).

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by HZC and H&F using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records.

Affiliation and Collapsing of HZC and H&F

Based on HZC's ownership interest in H&F (more than seventy percent), we continue to find as we have in past reviews that HZC and H&F are affiliated pursuant to sections 771(33)(E) and (G) of the Act. *See Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review* 68 FR 11039 (March 7, 2003) and *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review* 68 FR 39515 (July 2, 2003) (MTPs 2001/2002 Review). *See also Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review* 67 10363 (March 7, 2002) and *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review and Revocation, in-Part* 67 FR 35958 (May 22, 2002) (MTPs 2000/2001 Review). Furthermore, for purposes of this analysis, we are collapsing HZC and H&F. There is no new information or evidence of changed circumstances in this review to warrant reconsideration of this determination. *See MTPs 2001/2002 Review. See also MTPs 2000/2001 Review.*

Revocation Determination

On February 28, 2003, HZC/H&F requested, pursuant to 19 CFR

351.222(e)(1), partial revocation of the order with respect to its sales of MTPs. HZC/H&F certified that: (1) it sold the subject merchandise in commercial quantities at not less than NV for a period of at least three consecutive years; (2) in the future, it will not sell the subject merchandise at less than NV; and, (3) it agreed to immediate reinstatement under the order if the Department determines that, subsequent to revocation, it has sold the subject merchandise at less than NV.

Although HZC/H&F received zero margins in the two preceding reviews, based upon our finding that HZC/H&F sold subject merchandise at less than NV in this review, HZC/H&F has not demonstrated three consecutive years of sales in commercial quantities at not less than NV. Therefore, the Department preliminarily determines that partial revocation of the order with respect to HZC/H&F is not warranted.

Normal Value Comparisons

To determine whether respondents' exports of the subject merchandise to the United States were made at less than NV, we compared EP to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser for export to the United States. Because HZC/H&F sold the subject merchandise to unaffiliated trading companies in Japan prior to importation into the United States, we have treated HZC/H&F's sales as EP sales for purposes of these preliminary results. We calculated EP for HZC/H&F based on the packed, freight-prepaid price to the U.S. customer. We made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. inland brokerage and handling, and installation supervision expenses, in accordance with section 772(c)(2) of the Act.

Normal Value

While the home market is viable, in accordance with precedent in this case, we have determined that constructed value (CV) is appropriate as the basis for NV. *See Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review* 68 FR 11039 (March 7, 2003); *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review* 68 FR 39515 (July 2, 2003); *Mechanical Transfer Presses from Japan: Preliminary Results of Antidumping Duty Administrative Review* 67 10363 (March 7, 2002); and *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review and Revocation, in-Part* 67 FR 35958 (May 22, 2002).

Accordingly, we are using CV as the basis for NV for HZC/H&F, in accordance with section 773(a)(4) of the Act. CV consists of direct materials, direct labor, variable overhead, fixed overhead (yielding total cost of manufacturing), plus selling, general and administrative expenses, net interest expense, profit, and U.S. packing expenses. We subtracted home market direct selling expenses (warranties and credit). We added to CV amounts for direct selling expenses (warranties and credit) for merchandise exported to the United States.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Time Period	Margin (percent)
Hitachi Zosen Corporation/ Hitachi Zosen Fukui Corporation.	02/01/00–01/31/01	1.54

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. For HZC/H&F the assessment rate will be based on the margin above. The Department will issue appropriate appraisement instructions directly to CBP within 15 days of publication of the final results of review. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the entries during the period of review.

Cash Deposit Requirements

The following deposit rates will be effective with respect to all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results as provided for by section 751(a)(2)(c) of the Act. (1) For HZC/H&F, the cash deposit rate will be the company-specific rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the exporters of this merchandise, the cash deposit rate shall be the "all others" rate established in the less than fair value investigation, which is 14.51 percent. *See Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan* 55 FR 335 (January 4, 1990). These deposit rates, when imposed, shall remain in effect until the publication of the next administrative review.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations. Also, pursuant to section 351.310 of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be

raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

Notice to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. § 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: March 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5139 Filed 3–5–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–533–813

Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to timely requests by three manufacturers/exporters and the petitioner,[1] the Department of Commerce is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to five companies. The period of review is February 1, 2002, through January 31, 2003.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs and Border Protection to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: March 8, 2004.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Office 2, AD/CVD Enforcement Group I, Import Administration–Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311).

In response to timely requests by three manufacturers/exporters, Agro Dutch Foods Ltd. (Agro Dutch), Saptarishi Agro Industries, Ltd. (Saptarishi Agro), and Weikfield Agro Products, Ltd. (Weikfield), as well as the petitioner, the Department published a notice of initiation of an administrative review with respect to the following companies: Agro Dutch, Alpine Biotech, Ltd. (Alpine Biotech), Dinesh Agro Products, Ltd. (Dinesh Agro), Flex Foods, Ltd. (Flex Foods), Himalya International, Ltd. (Himalya), Mandeep Mushrooms, Ltd. (Mandeep Mushrooms), Premier Mushroom Farms (Premier), Saptarishi Agro, and Weikfield (68 FR 14399, March 25, 2003). The period of review (POR) is February 1, 2002, through January 31, 2003.

On March 28, 2002, the Department issued antidumping duty questionnaires to the above–mentioned companies. On April 7, 2003, the petitioner timely withdrew its request for review with respect to Alpine Biotech and Mandeep Mushrooms, and on July 14, 2003, the petitioner withdrew its request for review of Himalya. In addition, Flex Foods reported that it had no sales of the subject merchandise during the POR, which we confirmed by reviewing data from Customs and Border Protection (CBP) (*see* Memorandum to the File dated June 6, 2003). Accordingly, we published a *Notice of Partial Rescission of Antidumping Duty Administrative Review* with respect to Alpine Biotech, Mandeep Mushrooms, Flex Foods, and Himalya on August 18, 2003 (68 FR 49435). While Saptarishi Agro withdrew its request for a review on May 13, 2003, the petitioner did not withdraw its request for a review of this company, therefore, we did not rescind the review with respect to Saptarishi Agro.

We received responses to the original questionnaire during the period May through July 2003 from Agro Dutch, Premier, and Weikfield. We issued supplemental questionnaires in July, September, and October 2003, and received responses from these companies during the period August through October 2003. We did not receive a response from either Dinesh Agro or Saptarishi Agro.

On June 6, 2003, the petitioner made an allegation that Agro Dutch sold certain preserved mushrooms in its third country market at prices below the COP. On July 8, 2003, the Department initiated a cost investigation of Agro Dutch's third country sales (*see Petitioners' Allegation of Sales Below the Cost of Production for Agro Dutch*, Memorandum to the File dated July 8, 2003 (*Agro Dutch COP Initiation Memo*).

On July 15, 2003, the petitioner made an allegation that Premier sold certain preserved mushrooms in its home market at prices below the COP. On August 1, 2003, the Department initiated a cost investigation of Premier's home market sales (*see Petitioners' Allegation of Sales Below the Cost of Production for Premier*, Memorandum to the File dated August 1, 2003 (*Premier COP Initiation Memo*)).

On October 3, 2003, the Department extended the time limit for the preliminary results in this review until March 1, 2004. *See Certain Preserved Mushrooms from India and the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews and New Shipper Review*, 68 FR 57424.

In November 2003, we conducted on–site verifications of Premier's and Weikfield's questionnaire responses, in accordance with 19 CFR 351.307. The results of these verifications are described in *Sales and Cost of*

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

Production Verification in Secunderabad, India of Premier Mushroom Farms, Memorandum to the File dated January 23, 2004 (*Premier Verification Report*), and *Sales and Cost of Production Verification in Pune, India of Weikfield Agro Products, Ltd*, Memorandum to the File dated December 23, 2003 (*Weikfield Verification Report*).

As instructed by the Department, Weikfield and Premier submitted revised U.S. and home market sales data pursuant to verification findings on January 20, 2004, and February 6, 2004, respectively.

On February 12, 2004, the petitioner submitted comments on Premier and Weikfield for purposes of the preliminary results. The petitioner submitted comments on Agro Dutch on February 13, 2004.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States*[2] (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

Use of Facts Available

As noted above in the "Background" section, neither Dinesh Agro nor Saptarishi Agro submitted a response to the Department's antidumping questionnaire. Because of Dinesh Agro's and Saptarishi Agro's refusal to cooperate in this review, we determine that the application of facts available is appropriate, pursuant to section 776(a)(2) of the Tariff Act of 1930 (the Act).

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because these two companies refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act, the use of total facts available is appropriate (*see, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/ Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/ Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609, 40610–40611 (June 30, 2000)).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less–than-fair–value (LTFV) investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." Neither company responded to the Department's request for information, thereby failing to comply with this provision of the statute. Therefore, we determine that Dinesh Agro and Saptarishi Agro failed to cooperate to the best of their ability, making the use of an adverse inference appropriate.

In this proceeding, consistent with Department practice (*see, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review Brake Rotors From the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999), as adverse facts available, we have preliminarily assigned to exports of the subject merchandise produced by Dinesh Agro and Saptarishi Agro the rate of 66.24 percent, the highest rate calculated for any cooperative respondent in the original LTFV investigation or the three previous administrative reviews. The rates assigned to respondents in the previous segments of the proceeding range from *de minimis* for cooperative respondents to a petition rate of 243.87 percent for non–cooperative respondents. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR

[2] Prior to January 1, 2002, the HTS codes were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

8909, 8932 (February 23, 1998). Consistent with the previous administrative reviews, we find the application of a rate of 66.24 percent to Dinesh Agro and Saptarishi Agro to be sufficiently adverse in this case. Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870 and 19 CFR 351.308(c)(1). The SAA states that "corroborate" means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. *See* 19 CFR 351.308(d).

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In a previous segment of this proceeding, the Department determined that the petition rate of 243.87 percent could not be corroborated and thus no longer had probative value for use as an adverse facts available rate with respect to Saptarishi Agro. We found that the next highest rate, the calculated rate of 66.24 percent from a respondent in a previous review, was sufficiently adverse and that there was no impediment for its application to Saptarishi Agro in that review. *See Notice of Final Results of Administrative Review: Certain Preserved Mushrooms from India* 67 FR 46172 (July 12, 2002), and accompanying Issues and Decision Memorandum at Comment 8.

We preliminarily determine that the calculated margin of 66.24 percent selected, as adverse facts available, is relevant, reliable, and has probative value because it is based on verified data from a respondent in a previous administrative review. Furthermore, although this margin is the highest in the range of calculated margins, there is no basis to conclude that it is aberrational or is inappropriate as applied to Dinesh Agro and Saptarishi Agro. The rate used is also the rate currently applicable to Saptarishi Agro. Accordingly, we determine that this rate is an appropriate rate to be applied in this review to exports of the subject merchandise produced by Dinesh Agro and Saptarishi Agro as facts otherwise available.

Duty Absorption

On February 28, 2003, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated four years after the publication of the order, and Agro Dutch, Premier, and Weikfield acted as importer of record for some or all of their U.S. sales, we must make a duty absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act.

On September 30, 2003, the Department requested evidence from the respondents that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. In determining whether the antidumping duties have been absorbed by the respondents during the POR on sales for which they were importer of record, we presume that the duties will be absorbed for those sales that have been made at less than normal value (NV). This presumption can be rebutted with evidence (*e.g.*, an agreement between the respondent/importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. None of the respondents responded to the Department's request for information. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will pay the ultimately assessed duty. Therefore, we preliminarily find that antidumping duties have been absorbed by the producer or exporter during the POR on those sales for which the respondent was the importer of record. Premier was the importer of record for all of its sales to the United States, while Agro Dutch was the importer of record for 79.4 percent of its U.S. sales, and Weikfield was the importer of record for 71.7 percent of its U.S. sales. In addition, we find duty absorption for both Dinesh Agro and Saptarishi Agro on all of their sales, based on adverse facts available, because neither company responded to the Department's questionnaire.

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than NV, we compared export price (EP), as appropriate, to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted–average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market (Premier and Weikfield) or third country market (Agro Dutch) within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution, and label type.

Agro Dutch reported grade characteristics for its sales that departed from the criteria reported in previous reviews or by other respondents. Based on the explanations at pages 6 - 8 of the August 6, 2003, supplemental questionnaire response, we are not persuaded that a departure from the methodology established throughout this proceeding is warranted as Agro Dutch failed to demonstrate any meaningful differences in physical characteristics to require five rather than three grade designations. Further, we note that some of the grade differences claimed by Agro Dutch are already

defined by the mushroom style characteristic. Therefore, we have reclassified the products reported by Agro Dutch and reassigned product control numbers (CONNUMs) according to the methodology set forth in our questionnaire. *See Agro Dutch Preliminary Results Notes and Margin Calculation*, Memorandum to the File dated March 1, 2004, (*Agro Dutch Memo*) for a further discussion.

Export Price

For Agro Dutch, Premier, and Weikfield, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in India to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

Agro Dutch

Agro Dutch reported its U.S. sales as sold on an FOB, C&F, or CIF basis. We made deductions from the starting price, where appropriate, for foreign inland freight, freight document charges, transportation insurance, foreign brokerage and handling, Indian export duty (CESS), and international freight in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Premier

Premier reported its U.S. sales as sold on an FOB Hyderabad basis. We made a deduction from the starting price, where appropriate, for brokerage and handling expenses, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Weikfield

Weikfield reported its U.S. sales as sold on a FOB port Mumbai, delivered duty paid, or C&F basis. We made deductions from the starting price, where appropriate, for foreign inland freight, export inspection fees, foreign inland and marine insurance, foreign brokerage and handling expenses, CESS, international freight, and U.S. duty (including U.S. brokerage and handling expenses) in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

With regard to Premier and Weikfield, the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for Premier and Weikfield.

With regard to Agro Dutch, we determined that the home market was not viable because Agro Dutch's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise. However, we determined that the third country market of Israel was viable, in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, pursuant to section 773(a)(1)(C) of the Act, we have used third country sales as a basis for NV for Agro Dutch. However, in certain cases, Agro Dutch did not have sales of comparable merchandise to Israel that were contemporaneous with sales to the United States. In those instances, we calculated NV based on constructed value (CV) in accordance with section 773(e) of the Act 19 CFR 351.405.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing (*id.*); *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa* (*Plate from South Africa*) 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa* at 61731. We obtained information from the respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

Agro Dutch

Agro Dutch sold to importers/traders through one channel of distribution in both the U.S. and Israeli markets. As described in its questionnaire response, Agro Dutch performs no selling functions in the United States or in any of the third countries to which it sells, including Israel. Therefore, these sales channels are at the same LOT. Accordingly, all comparisons are at the same LOT for Agro Dutch and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Premier

In the home market, Premier sold directly to small local distributors that sell to retailers or local hotels. We examined Premier's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Premier offers the same support and assistance to all its home market customers. Accordingly, all of Premier's home market sales are made through the

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

same channel of distribution and constitute one LOT.

With regard to sales to the United States, Premier made only EP sales to large distributors. We examined Premier's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Premier offers the same support and assistance to all its U.S. customers. Accordingly, all of Premier's U.S. sales are made through the same channel of distribution and constitute one LOT. This EP LOT differed considerably from the home market LOT with respect to sales process, advertising, and inventory maintenance. Consequently, we could not match the EP LOT to sales at the same LOT in the home market. Since there was only one LOT in the home market, there was no pattern of consistent price differences between different LOTs in the home market, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Accordingly, we have not made a LOT adjustment. *See* section 773(a)(7)(A) of the Act.

Weikfield

Weikfield's home market sales are made via two channels of distribution: a) direct sales to large quantity end–users, and b) sales to distributors and "carrying and forwarding" (C&F) agents, which either resell the merchandise to small quantity end–users, or act as Weikfield's agent in selling and distributing the merchandise to small quantity end–users. We examined Weikfield's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its home market customers except with respect to sales promotion activities. In the Indian states of Maharashtra and Goa, Weikfield's affiliate WPCL includes Weikfield's preserved mushrooms products in its market development activities to promote sales.

With respect to such functions as sales negotiation, freight and distribution services, and inventory maintenance, the two channels involve the same services performed by Weikfield. With respect to sales promotion activities, the level of sales promotion activities performed by WPCL are not so extensive as to constitute a separate LOT. Accordingly, we consider all of Weikfield's home market sales to constitute one LOT.

With regard to sales to the United States, Weikfield made only EP sales to importers/traders. We examined Weikfield's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its U.S. customers. Accordingly, all of Weikfield's U.S. sales are made through the same channel of distribution and constitute one LOT.

We compared the EP LOT to the home market LOT and concluded that the selling functions performed for home market customers are sufficiently similar to those performed for U.S. customers because the same services are offered in both markets. Apart from the promotion activities conducted by WPCL on Weikfield's behalf in the home market which are not extensive, as discussed above, Weikfield does not perform different selling activities in either the U.S. or home markets. Weikfield's selling activities undertaken in both markets are limited to responding to infrequent product complaints and, in the home market, arranging for domestic freight on certain sales. Accordingly, we consider the EP and home market LOTs to be the same. Consequently, we are comparing EP sales to sales at the same LOT in the home market.

Cost of Production Analysis

As stated in the "Background" section of this notice, based on timely allegations filed by the petitioner, the Department initiated investigations to determine whether Agro Dutch's third country sales and Premier's home market sales were made at prices less than the COP within the meaning of section 773(b) of the Act. *See Agro Dutch COP Initiation Memo* and *Premier COP Initiation Memo.*

In addition, the Department disregarded certain sales made by Weikfield in the 2001–2002 administrative review, pursuant to findings in that review that sales failed the cost test (*see Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India*, 68 FR 41303 (July 11, 2003). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Weikfield made sales in the home market at prices below the cost of producing the merchandise in the current review period.

A. Calculation of Cost of Production

We calculated the COP on a product–specific basis, based on the sum of each company's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on the COP information submitted by Agro Dutch, Premier, and Weikfield, except for the following adjustments:

Premier

1. We included certain expenses which were omitted from variable overhead expenses, as discussed at page 16 of the *Premier Verification Report.*
2. We revised the per–kilogram fixed overhead cost to correct errors in allocating shared depreciation expenses, as discussed at page 17 of the *Premier Verification Report.*
3. We revised the reported labor expense to account for the reallocation of labor expenses to head office and sales employees, as discussed at page 15 of the *Premier Verification Report*, and to fully account for certain year–end adjustments to the reported cost of manufacture, as discussed at pages 6 and 15 of the *Premier Verification Report.*
4. We revised the financial expense ratio by excluding bank charges from the numerator of the calculation, as discussed at page 23 of the *Premier Verification Report.*
5. We revised the G&A expenses to account for changes in the G&A expense ratio due to the reallocation of a portion of labor expenses made at the commencement of verification, as discussed at page 22 of the *Premier Verification Report.*

Weikfield

1. We revised the reported direct material costs to include an offset for sales of spent compost recorded as "other income," as discussed at page 12 of the *Weikfield Verification Report.*
2. We revised the reported factory overhead expenses costs to reflect the revised depreciation expenses presented at the commencement of the verification and submitted for the record in the December 2, 2003, submission.
3. We revised the reported G&A expense to reflect the corrected ratio presented at the commencement of the verification and submitted for the record in the December 2, 2003, submission. In addition, we added the depreciation costs for "idled assets" excluded from Weikfield's reporting, as discussed at page 15 of the *Weikfield Verification Report*, to the G&A expense total, consistent with our treatment of these expenses in the previous review (*see Final Results of Antidumping Duty*

Administrative Review: Certain Preserved Mushrooms From India, 68 FR 41303 (July 11, 2003) (*AR3 Final Results*), Issues and Decision Memorandum at Comment 10). *See Weikfield Preliminary Results Notes and Margin Calculation*, Memorandum to the File dated March 1, 2004, for a further discussion of these adjustments.

B. Test of Home or Third Country Market Prices

For all three companies, on a product–specific basis, we compared the weighted–average COP to the prices of home market or third country market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of interest revenue, where appropriate) were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses and packing expenses, revised where appropriate as discussed below under "Price–to-Price Comparisons." In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) within an extended period of time, (2) in substantial quantities; and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below–cost sales because we determined that they represented "substantial quantities" within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost test for Weikfield indicated that less than 20 percent of home market sales of any given product were at prices below COP. We therefore retained all sales in our analysis and used them as the basis for determining NV.

The results of our cost tests for Agro Dutch and Premier indicated that for certain products more than 20 percent of home market sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. *See* 773(b)(2) of the Act. In accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining sales as the basis for determining NV.

Price–to-Price Comparisons

For Agro Dutch, Premier and Weikfield, we based NV on the price at which the foreign like product is first sold for consumption in the home market or third country market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as EP, as defined by section 773(a)(1)(B)(i) of the Act.

Home market or third country prices were based on ex–Hyderabad, FOB Indian port, or delivered prices. We reduced the starting price for discounts (Weikfield), credit notes (Premier), and movement expenses (Agro Dutch, Premier and Weikfield), and increased the starting price for interest revenue (Premier), where appropriate, in accordance with section 773(a)(6) of the Act and 19 CFR 351.401. We treated Premier's discounts as commissions. *See* Memorandum to the File dated March 1, 2004, *Preliminary Results Calculation Memorandum for Premier Mushroom Farms* (*Premier*). We also reduced the starting price for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i), and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A). We made circumstance–of-sale adjustments for credit expenses, bank fees, and commissions, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. For Premier and Weikfield, we made an adjustment to NV to account for commissions paid in the home market but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for home market commissions, we applied the lesser of home market commissions or U.S. indirect selling expenses.

During the POR, a number of Agro Dutch's shipments to the United States were rejected and returned to India. A large portion of these sales were resold to third country markets other than Israel. *See* page 15 and Exhibit Supp. C–1 of Agro Dutch's August 6, 2003, supplemental questionnaire response, and Agro Dutch's December 15, 2003, letter. To account for these expenses, we included the expenses incurred to ship the rejected sales to the United States as an indirect selling expense for U.S. sales. In addition, we also included as an indirect selling expense for U.S. sales the expenses incurred to return the rejected sales to India, less an amount for merchandise resold to third country customers. *See Agro Dutch Memo*, for a further discussion of these expenses.

We recalculated Premier's indirect selling expenses to include certain sales expenses incorrectly included in labor and G&A. *See Premier Verification Report* at page 26.

Consistent with our treatment in the previous review, we have not considered Weikfield's commission payments to WPCL on home market and U.S. sales to be at arm's length, and instead have included the selling expenses incurred by WPCL on Weikfield's behalf as part of Weikfield's indirect selling expenses. *See AR3 Final Results*, Issues and Decision Memorandum at Comments 4 and 7.

As discussed at page 22 of the *Weikfield Verification Report*, Weikfield was unable to demonstrate that it actually incurred a freight expense on sales made to customers near its production facility. Sales to these customers were shipped either by Weikfield's own trucks, or by local contractors for whom no payment records were maintained. Therefore, we did not deduct movement expenses from the starting price for these sales.

We recalculated Weikfield's home market imputed credit expense based on the methodology used in its questionnaire response to account for revisions to prices, discounts and payment dates made to the sales data base as a result of verification findings, and to deduct freight expenses from the price base for sales made on a freight–collect basis, where the cost of freight was deducted on the invoice, but not from the price base used to calculate imputed credit.

To calculate U.S. indirect selling expenses, we used the U.S. indirect selling expense ratio Weikfield calculated at verification because Weikfield did not include a U.S. indirect selling expense in its reported sales listing. *See Weikfield Verification Report* at page 29.

Calculation of Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which indicates that CV shall be based on the sum of each respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A expenses, profit and U.S. packing costs. We relied on the submitted CV information except for the following adjustments:

Premier

We made the same adjustments to the CV data as we made to the COP data, as discussed above under "Calculation of Cost of Production."

Weikfield

We made the same adjustments to the CV data as we made to the COP data, as discussed above under "Calculation of Cost of Production."

Price–to-Constructed Value Comparisons

For Agro Dutch, we based NV on CV for comparison to certain U.S. sales, in accordance with section 773(a)(4) of the Act. For comparisons to Agro Dutch's EP sales, we made circumstance–of-sale adjustments by deducting from CV the weighted–average direct selling expenses of Agro Dutch's above–cost third country sales, and adding the U.S. direct selling expenses, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted–average dumping margins for the period February 1, 2001, through January 31, 2002, are as follows:

Manufacturer/Exporter	Percent margin
Agro Dutch Foods, Ltd	8.41
Dinesh Agro Products, Ltd.	66.24
Premier Mushroom Farms	27.30
Saptarishi Agro Industries, Ltd.	66.24
Weikfield Agro Products, Ltd. ...	12.45

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review.

For assessment purposes, we do not have the actual entered values for certain sales made by Weikfield because Weikfield was not the importer of record on some of its U.S. sales and it did not obtain the entered value data for those sales. Accordingly, we intend to calculate importer–specific assessment rates by aggregating the dumping margins calculated for all of Weikfield's U.S. sales examined and dividing the respective amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer–specific *ad valorem* ratios based on export prices. With respect to Agro Dutch and Premier, we intend to calculate importer–specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined.

The Department will issue appropriate appraisement instructions directly to CBP upon completion of this review. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer- or customer–specific assessment rate calculated in the final results of this review is above de minimis (*i.e.*, at or above 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the "All Others" rate made effective by the LTFV investigation (*see Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India*, 64 FR 8311 (February 19, 1999)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5137 Filed 3–5–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review, Notice of Partial Rescission of Administrative Review, and Notice of Intent To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India with respect to Chandan Steel Limited; Ferro Alloys Corp. Ltd.; Isibars Limited; Mukand, Ltd.; Jyoti Steel Industries; Venus Wire Industries Limited; and the Viraj Group, Ltd. (Viraj Alloys, Ltd.; Viraj Forgings, Ltd.; and Viraj Impoexpo, Ltd). This review covers sales of stainless steel bar to the United States during the period February 1, 2002, through January 31, 2003.

We have preliminarily determined that sales have been made below normal value by three of the respondents in this proceeding, Chandan Steel Limited, Isibars Limited, and Jyoti Steel Industries. In addition, we have preliminarily determined to rescind the review with respect to Ferro Alloys Corp., Ltd. and Mukand, Ltd. because they withdrew their requests for review within the time limit specified under 19 CFR 351.213(d)(1). Finally, we have preliminarily determined to revoke the antidumping duty order with respect to the Viraj Group, Ltd. If these preliminary results are adopted in the final results of this review, we will instruct Customs and Border Protection to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: March 8, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Irina Itkin, Office 2, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0629 or (202) 482–0656 respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2003, the Department of Commerce (the Department) published a notice in the **Federal Register** (68 FR 5272) of the opportunity for interested parties to request an administrative review of the antidumping duty order on stainless steel bar (SSB) from India.

In accordance with 19 CFR 351.213(b)(1), on February 26, 2003, the Department received a request for an administrative review from Venus Wires Industries Ltd. (Venus), an Indian producer/exporter of SSB in India. On February 27, 2003, in accordance with 19 CFR 351.213(b)(1), the Department received a request for an administrative review from the petitioners (*i.e.*, Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., Slater Steels Corp., Empire Specialty Steel and the United Steelworkers of America (AFL–CIO/CLC)), for the following producers/exporters of stainless steel bar in India: Chandan Steel Limited (Chandan), Isibars Limited (Isibars), Jyoti Steel Industries (Jyoti), Venus, and the Viraj Group, including but not necessarily limited to Viraj Alloys, Ltd. (VAL), Viraj Forgings, Ltd. (VFL), Viraj ImpoExpo Ltd., Viraj Smelting, and Viraj Profiles (collectively, Viraj). Finally, in accordance with 19 CFR 351.213(b)(2), on February 28, 2003, the Department received additional requests to conduct an administrative review from four Indian exporters (*i.e.*, Ferro Alloys Corp. Ltd. (FACOR), Isibars, Mukand, Ltd. (Mukand), and Viraj). As part of its request, Viraj also requested that the Department revoke the antidumping duty order with regard to its sales of subject merchandise, in accordance with 19 CFR 351.222(b).

On March 25, 2003, the Department initiated an administrative review of the antidumping duty order on SSB from India for the following companies: Chandan, FACOR, Isibars, Jyoti, Mukand, Venus, and Viraj. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (Mar. 25, 2003). We issued questionnaires to each of these companies on April 4, 2003.

On April 7, 2003, and May 9, 2003, respectively, Mukand and FACOR withdrew their requests for review. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

In May 2003, we received responses to section A of the Department's questionnaire from Chandan, Isibars, Jyoti, Venus, and Viraj. (Because Isibars improperly filed its section A questionnaire response, we did not place this information on the record until August 11, 2003.)

Also in May 2003, respectively, we issued supplemental section A questionnaires to Chandan and Venus. We received responses to those supplemental questionnaires on May 30 and June 24, 2003, respectively.

In May and June 2003, we received responses to sections B and C of the questionnaire from Chandan, Isibars, Jyoti, Venus, and Viraj. (Because Isibars improperly filed its sections B and C questionnaire responses, we did not place this information on the record until August 11, 2003.)

In June 2003, we received section D responses from Isibars and Venus.

On June 23, 2003, the petitioners submitted timely allegations that Chandan and Viraj made sales below the cost of production (COP). With respect to Viraj, we found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales in the home market by Viraj had been made at prices below the COP. Consequently, on July 1, 2003, pursuant to section 773(b) of the Tariff Act of 1930, as amended (the Act), we initiated an investigation to determine whether Viraj made home market sales during the period of review (POR) at prices below the COP, within the meaning of section 773(b) of the Act. *See* the July 1, 2003, memorandum to Louis Apple from the Team entitled, "Antidumping Duty Administrative Review on Stainless Steel Bar from India: Analysis of the Petitioner's Allegation of Sales Below the Cost of Production for Viraj ImpoExpo Ltd." (sales below cost allegation memo—Viraj). Accordingly, we notified Viraj

that it must respond to Section D of the antidumping duty questionnaire. On July 29, 2003, we received Viraj's response to the Department's section D questionnaire.

Regarding Chandan, the petitioners alleged that Chandan's sales in its largest third-country market were made at prices below their COP, even thought Chandan's home market was viable. Because we did not intend to rely on Chandan's third-country sales as the basis for normal value (NV), we did not analyze the petitioners' allegation of sales below the COP in the third country market.

In June 2003, we issued supplemental questionnaires to Chandan, Jyoti, and Viraj. We received responses to these supplemental questionnaires in June and July 2003.

In July 2003, we issued additional supplemental questionnaires to Chandan, Isibars, Jyoti, and Venus. We received responses to these questionnaires from Chandan, Jyoti, and Venus in July and August 2003. We did not receive a response from Isibars to its supplemental questionnaire. For further discussion, see the "Facts Available" section of this notice below.

On July 21, 2003, in response to Chandan's revised section B submission, the petitioners made a timely allegation that Chandan made home market sales below the COP. We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales in the home market made by Chandan had been made at prices below the COP.

On July 29, 2003, pursuant to section 773(b) of the Act, we initiated an investigation to determine whether Chandan made home market sales during the POR at prices below the COP, within the meaning of section 773(b) of the Act. *See* the July 29, 2003, memorandum to Louis Apple from the Team entitled, "Antidumping Duty Administrative Review on Stainless Steel Bar from India: Analysis of the Petitioner's Allegation of Sales Below the Cost of Production for Chandan Steel, Ltd." Accordingly, we notified Chandan that it must respond to Section D of the antidumping duty questionnaire. We received Chandan's response to section D of the Department's questionnaire on September 2, 2003.

On August 4, 2003, the Department found that due to the large number of respondents, and the time required to review and analyze the responses once they were received, it was not practicable to complete this review within the time allotted. Accordingly, we published an extension of time limit for the completion of the preliminary results of this review to no later than February 28, 2004, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). *See Stainless Steel Bar from India; Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review*, 68 FR 45793 (Aug. 4, 2003).

On August 11, 2003, we requested that Jyoti provide corrected cost data such that difference in merchandise (difmer) adjustments would be possible, if required. We received Jyoti's response to its difmer supplemental questionnaire on August 19, 2003.

In August 2003, we issued to Chandan, Jyoti, and Venus additional supplemental questionnaires. We received responses to these supplemental questionnaires in August and September 2003.

Based on Jyoti's supplemental section B response, on October 2, 2003, the petitioners submitted a timely allegation that Jyoti made home market sales below the COP. We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales in the home market by Jyoti had been made at prices below the COP. Consequently, on October 15, 2003, pursuant to section 773(b) of the Act, we initiated an investigation to determine whether Jyoti made home market sales during the POR at prices below the COP, within the meaning of section 773(b) of the Act. *See* the October 15, 2003, memorandum to Louis Apple from the Team entitled, "Antidumping Duty Administrative Review on Stainless Steel Bar from India: Analysis of the Petitioner's Allegation of Sales Below the Cost of Production for Jyoti Steel Industries." Accordingly, we notified Jyoti that it must respond to Section D of the antidumping duty questionnaire.

In October 2003, we issued supplemental questionnaires to Chandan and Viraj. We received responses to these supplemental questionnaires in November 2003.

We received Jyoti's response to the Department's section D questionnaire on November 10, 2003.

In January 2004, we issued Chandan a final supplemental questionnaire. We also received Chandan's response to this supplemental questionnaire in January 2004.

On January 23, 2004, we determined that Jyoti's submissions contained serious deficiencies which could not be remedied given the time constraints of this administrative review. Consequently, we determined that it was not appropriate to either issue Jyoti an additional supplemental questionnaire in this administrative review or to conduct verification of Jyoti's responses, and we notified Jyoti of these decisions accordingly. For further discussion, *see* the "Facts Available" section of this notice below.

From January 27, 2004, through February 6, 2004, we conducted verification of Viraj's responses at Viraj's offices in Mumbai, India.

Scope of the Order

Imports covered by this review are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Period of Review

The POR is February 1, 2002, through January 31, 2003.

Partial Rescission of Review

As noted above, on April 7, 2003, and May 9, 2003, respectively, Mukand and FACOR withdrew their requests for an administrative review. Because the petitioners did not request an administrative review of either FACOR

or Mukand and both FACOR and Mukand withdrew their requests within the time limit specified under 19 CFR 351.213(d)(1), we are rescinding our review with respect to these companies.

Notice of Intent To Revoke, in Part

On February 28, 2003, Viraj requested revocation of the antidumping duty order with respect to its sales of the subject merchandise, pursuant to 19 CFR 351.222(b). In a subsequent submission, Viraj provided each of the certifications required under 19 CFR 351.222(e).

The Department may revoke, in whole or in part, an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell subject merchandise at less than NV in the future; (2) a certification that the company sold commercial quantities of the subject merchandise to the United States in each of the three years forming the basis of the request; and (3) an agreement to immediate reinstatement of the order if the Department concludes that the company, subsequent to the revocation, sold subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider: (1) Whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than NV; and (3) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping. *See* 19 CFR 351.222(b)(2)(i).

We preliminarily determine that the request from Viraj meets all of the criteria under 19 CFR 351.222. With regard to the criteria of subsection 19 CFR 351.222(b)(2), our preliminary margin calculations show that Viraj sold SSB at not less than normal value during the current review period. *See* dumping margins below. In addition, Viraj sold SSBs at not less than NV in the two previous administrative reviews in which it was involved (*i.e.*, Viraj's dumping margin was zero or *de minimis*). *See Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 47543 (Aug. 11, 2003) (*2001–2002 SSB AR Final*), covering the period February 1, 2001, through January 31, 2002, and *Notice of Amended Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar From India*, 67 FR 53336 (Aug. 15, 2002), covering the period February 1, 2000, through January 31, 2001.

Based on our examination of the sales data submitted by Viraj, we preliminarily determine that Viraj sold the subject merchandise in the United States in commercial quantities in each of the consecutive years cited by Viraj to support its request for revocation. *See* the March 1, 2004, memorandum to the file from Michael Strollo entitled, "Analysis of Commercial Quantities for Viraj Group Ltd.'s Request for Revocation," which is on file in room B–099 of the Department's Central Records Unit, Room B–099. Thus, we preliminarily find that Viraj had zero or *de minimis* dumping margins for its last three administrative reviews and sold in commercial quantities in each of these years. Also, we preliminarily determine that application of the antidumping order to Viraj is no longer warranted for the following reasons: (1) The company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than fair value; and (3) the continued application of the order is not otherwise necessary to offset dumping. Therefore, we preliminarily determine that Viraj qualifies for revocation of the order on SSB pursuant to 19 CFR 351.222(b)(2) and that the order with respect to merchandise produced and exported by Viraj should be revoked. If these preliminary findings are affirmed in our final results, we will revoke this order in part for Viraj and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any of the merchandise in question that is entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, and will instruct Customs and Border Protection (CBP) to refund any cash deposits for such entries.

Facts Available

A. Application of Facts Available

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for the dumping margins for the following producer/exporters: Chandan, Isibars, and Jyoti. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

1. Isibars

On May 27, 2003, and June 20, 2003, Isibars submitted responses to sections A/B/C and D of the Department's questionnaire, respectively. Because these responses contained significant and pervasive deficiencies, on July 11, 2003, and August 7, 2003, we issued supplemental questionnaires to Isibars. At the request of Isibars, we granted the company over five weeks to respond to these questionnaires. Despite the fact that Isibars had sufficient time to respond, it failed to do so.

We find that Isibars' questionnaire responses contain pervasive and significant deficiencies rendering its submissions so incomplete that they cannot serve as a reliable basis for reaching a determination. *See* section 782(e) of the Act. For example, Isibars, *inter alia*: (1) Failed to substantiate ownership and control of both Isibars and its affiliates; (2) failed to reconcile the total sales value reported in the U.S. sales listing to its 2002 and 2003 financial statements; (3) failed to reconcile the total sales value reported in the home market sales listing to its 2001, 2002, and 2003 financial statements; (4) failed to demonstrate that sales to affiliated parties were reported correctly in the home market sales listing; (5) reported home market sales of significantly different volumes and values in the section B response than the aggregate volume and value of home market sales in the section A response; (6) failed to confirm that stainless steel black bars were reported in both the quantity and value of sales in both the home market and the United States; (7) failed to adequately describe the selling functions performed by Isibars and its affiliates in either the home or U.S. markets; (8) incorrectly reported the dates of sale and payment for certain home market transactions; (9) reported size incorrectly; (10) failed to

include a narrative description of several product codes listed in the database submitted to the Department; (11) failed to report costs based upon the correct fiscal year; (12) failed to report unique costs for each control number; (13) failed to substantiate various cost allocations; (14) failed to provide several cost reconciliations, the most important being a reconciliation of the financial statements to the general ledger; and (15) failed to provide all worksheets substantiating its calculations. For a complete list of the deficiencies in Isibars' responses, *see* the supplemental questionnaires issued to this company on July 11, 2003, and August 7, 2003.

Section 776(a)(2) of the Act provides that if an interested party (1) Withholds information that has been requested by the Department (2) fails to provide such information in a timely manner or in the form or manner requested (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(c)(1) and (e), use facts otherwise available in reaching the applicable determination. As discussed above, Isibars' information was so incomplete that it could not be used by the Department. As such, the Department must use facts otherwise available with regard to Isibars pursuant to sections 776(a)(2)(A) and (B) of the Act.

2. Jyoti

As noted above, Jyoti responded to the Department's questionnaire on May 27, 2003. Because this questionnaire response contained substantial errors and omissions, we issued Jyoti six supplemental questionnaires. In four of these supplemental requests, we required Jyoti to recalculate its manufacturing costs reported as part of its difmer adjustment. Although we afforded Jyoti ample time to respond to each of these six requests, Jyoti's submissions were not only incomplete, they were largely unresponsive to the Department's explicit instructions.

As a result of Jyoti's failure to provide adequate difmer data, the petitioners were unable to use Jyoti's submissions as the basis for a sales below COP allegation until October 2003, more than four months after the Department received Jyoti's initial sections B and C response.

Nonetheless, in October 2003, the petitioners provided adequate reason for the Department to believe or suspect that sales in the home market by Jyoti had been made at prices below the COP. On November 14, 2003, Jyoti submitted a wholly inadequate response to the Section D questionnaire, failing to remedy the deficiencies remaining in its cost reporting. As noted above, we had previously notified Jyoti of these deficiencies and required the company to remedy them. The most significant of these deficiencies are summarized below.

Specifically, Jyoti: (1) Failed to provide costs on a POR weighted-average basis; (2) failed to provide direct material costs on a POR weighted-average basis using the total raw materials consumed during the POR; (3) failed to account for physical differences (grade, size, and finish) in its labor and variable overhead costs; (4) failed to provide cost reconciliations including the reconciliation of total fiscal year costs from Jyoti's financial accounting system to the costs from audited financial statements, the reconciliation of total fiscal year cost of manufacturing from financial statements to the total per-unit manufacturing costs submitted, reconciliation of differences between methodology used to report costs and Jyoti's normal record keeping, reconciliation of the cost of merchandise not under consideration, reconciliation of cost of merchandise under consideration but not sold to the United States and Hong Kong, reconciliation of reported general and administrative (G&A) expenses to the audited financial statements, and reconciliation of reported interest expenses to the audited financial statements; (5) improperly included costs incurred outside the POR (*i.e.*, from the window periods before and after the POR) in its reported COP; (6) failed to provide a complete description of its production facilities and the products produced at each facility; (7) failed to provide sufficient detail regarding the inputs used to produce the subject merchandise (*i.e.*, raw materials, labor, energy, subcontractor services, etc.); (8) failed to provide sufficient detail regarding its internal taxes; and (9) incorrectly calculated its reported G&A expenses on a market-specific basis instead of using data from its audited financial statements.

In light of these deficiencies and omissions, we find that Jyoti's responses to the Department's requests for cost data were so incomplete that they could not serve as a reliable basis for reaching the instant determination. Specifically, we note that COP/constructed value (CV) data is vital to our dumping analysis, because: (1) It provides the basis for determining whether comparison market sales can be used to calculate normal value; and (2) in certain instances (*e.g.*, when there are no comparison market sales made at prices above the COP), it is used as the basis of NV itself. In cases involving a sales-below-cost investigation, as in this case, lack of COP/CV information renders a company's response so incomplete as to be unuseable. *See, e.g., Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 43650, 43655 (Aug. 11, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (Mar. 31, 1999); *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 82 (Jan. 4, 1999); *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 43661, 43664 (Aug. 14, 1998); and *Certain Cut-to-Length Carbon Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review*, 62 FR 18396, 18401 (Apr. 15, 1997). *See also* section 782(e) of the Act.

Despite the Department's attempts to obtain the missing information, pursuant to section 782(d) of the Act, Jyoti failed to rectify its deficiencies. Thus, the Department finds that we must resort to facts otherwise available in reaching our preliminary results, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

3. Chandan

As noted above, Chandan responded to section A of the Department's questionnaire on May 15, 2003, sections B and C on June 9, 2003, and section D on September 2, 2003. Because these questionnaire responses contained substantial errors and omissions, we issued Chandan seven supplemental questionnaires. Although we afforded Chandan ample time to respond to each of these seven requests, Chandan's submissions were not only incomplete, they were largely unresponsive to the Department's explicit instructions.

In particular, on October 9, 2003, the Department issued Chandan a supplemental section D questionnaire requesting that it provide additional information or clarification on a number of issues, as well as the missing items from the prior cost response. Despite the fact that Chandan was granted almost a month in which to respond to this supplemental section D questionnaire, on November 5, 2003, Chandan submitted an inadequate response. Consequently, on January 14, 2004, we issued Chandan an additional supplemental questionnaire requesting

that it provide largely the same information identified previously. On January 26, 2004, Chandan again submitted a wholly inadequate response to the supplemental section D questionnaire. The most significant of these deficiencies are summarized below.

Specifically, Chandan: (1) Failed to calculate certain costs based upon its internal costs, instead relying upon charges billed by a "toll-processor"; (2) failed to report unique costs for each type of finishing operation; (3) failed to report bright bar yield loss; (4) failed to provide correct cost size ranges; (5) failed to provide cost reconciliations including the reconciliation of total fiscal year cost of manufacturing from financial statements to the total per-unit manufacturing costs submitted, reconciliation of differences between methodology used to report costs and Chandan's normal record keeping, and reconciliation of cost of merchandise by market; (6) systematically failed to provide requested worksheets or other substantiation to justify its calculations and allocations; and (7) failed to fully allocate all costs.

In light of these deficiencies and omissions, we find that Chandan's cost data was so incomplete that it could not serve as a reasonable basis for reaching the instant determination. As noted above, COP/CV data is vital to our dumping analysis, especially where, as here, the case involves a sales-below-cost-allegation.

Despite the Department's attempts to obtain the missing information, pursuant to section 782(d) of the Act, Chandan failed to rectify its deficiencies. Thus, the Department must resort to facts otherwise available in reaching our preliminary results, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

B. Adverse Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Each of the respondents was notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of facts available. Generally, it is reasonable for the Department to assume that Chandan, Isibars, and Jyoti possessed the records necessary for this administrative review and that by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. In addition, none of the companies in this review argued that they were incapable of providing the information the Department requested. Accordingly, because Chandan, Isibars, and Jyoti failed to submit useable sales and/or cost information which was not only specifically requested by the Department but was also fundamental to the dumping analysis, we have assigned these companies margins based on total adverse facts available (AFA), consistent with sections 776(a)(2)(A), (B), and (C) and 776(b) of the Act.

As AFA for Chandan, Isibars, and Jyoti, we have used the highest rate ever assigned to any respondent in any segment of this proceeding. This rate is 21.02 percent. We find that this rate, which was the rate alleged in the petition and assigned in the investigation of this proceeding, is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding). (This margin was also assigned to Mukand in the most recent most recently completed segment of the proceeding. *See 2001–2002 SSB AR Final.) See also Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 63 FR 12752, 12762–3 (Mar. 16, 1998).

C. Corroboration of Secondary Information

As facts available in this case, the Department has used information derived from the petition, which constitutes secondary information. *See* 19 CFR 351.308(c)(1). Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Department's regulations provide that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* 19 CFR 351.308(d). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

To corroborate the selected margin, we considered that we have corroborated the 21.02 percent petition rate in a prior review. *See 2001–2002 SSB AR Final*, 68 FR 47543 and accompanying decision memorandum at *Comment 1*. In this review, we compared the selected rate (*i.e.*, 21.02 percent) to individual transaction margins for companies in this administrative review with weighted-average margins above *de minimis*. We found that the selected margin falls within the range of individual transaction margins and that there were a significant number of sales, made in the ordinary course of trade, in commercial quantities, with margins near or exceeding 21.02 percent. On this basis, we determined that the selected margin was reliable as there is no evidence on the record of this review that would lead us to change our assessment of the reliability of the 21.02 rate.

Accordingly, we consider the 21.02 percent margin to be corroborated in this review, and have assigned Chandan, Isibars, and Jyoti this rate as total AFA.

Collapsing

Viraj

In this administrative review, in past administrative reviews of SSB from India, and in other antidumping proceedings before the Department, the Viraj Group Ltd. has responded to the Department's questionnaires on behalf of the affiliated companies comprising the Viraj Group, Ltd. (*i.e.*, VAL, Viraj Impo/Expo, Ltd. (VIL), and VFL). *See 2001–2002 SSB AR Final* and accompanying decision memorandum at *Comment 10; see also Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 68 FR 26288–03 (May 15, 2003); *Stainless Steel Wire Rod From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 70765 (Dec. 19, 2003); *Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 1040 (Jan. 8, 2003). In the *2001–2002 AR Final*, the Department collapsed VAL, VIL and VFL because the record evidence demonstrated that VAL and VIL were able to produce similar or identical merchandise (*i.e.*, the merchandise under review) during the POR and could continue to do so, independently or under existing agreements, without substantial retooling of their production facilities. The Department also found that there was a significant potential for the manipulation of price and production among VAL, VIL and VFL. Because the record evidence in this review is the same as the facts upon which the

Department relied in past administrative reviews, we continue to find that VAL, VIL and VFL are affiliated and should be treated as one entity for the purposes of this administrative review (*i.e.*, collapsed) pursuant to section 771(33) of the Act and 19 CFR 351.401(f).

Verification

As provided in section 782(i) of the Act, we verified the sales and cost information provided by Viraj. We used standard verification procedures, including examination of relevant sales and financial records. Our verification results are outlined in Viraj's verification reports placed in the case file in the Central Records Unit, main Commerce building, room B–099.

Comparisons to Normal Value

To determine whether sales of SSB from India to the United States were made at less than NV, we compared export price (EP) or constructed export price (CEP) to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with 19 CFR 351.414(c)(2), we compared individual EPs and CEPs to weighted-average NVs, which were calculated in accordance with section 777A(d)(2) of the Act.

Product Comparisons

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade (*i.e.*, sales within the same month which passed the cost test), we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in sections B and C of our antidumping questionnaire, or CV, as appropriate.

Also, in accordance with section 771(16) of the Act, we first attempted to compare products produced by the same company and sold in the U.S. and home markets that were identical with respect to the following characteristics: type, grade, remelting process, finishing operation, shape, and size. Where there were no home market sales of the foreign like product that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority. Where we were unable to match U.S. sales to home market sales of the foreign like product, we based NV on CV.

Export Price and Constructed Export Price

Venus

For all U.S. sales made by Venus, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record.

We based EP on packed CIF and delivered duty paid prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, foreign inland freight, foreign brokerage and handing, international freight, marine insurance, U.S. customs duties, U.S. inland freight, and other U.S. brokerage and handling expenses.

Viraj

For all U.S. sales made by Viraj, we used CEP methodology, in accordance with section 772(b) of the Act, for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on packed, CIF, and ex-dock duty-paid prices to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, foreign inland freight, foreign brokerage and handing, international freight, marine insurance, clearance expenses, and U.S. customs duties.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including indirect selling expenses. We revised indirect selling expenses to calculate POR expenses over POR sales. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Viraj and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Duty Drawback

Venus and Viraj claimed a duty drawback adjustment based on their participation in the Indian government's Duty Entitlement Passbook Program. Such adjustments are permitted under section 772(c)(1)(B) of the Act.

The Department will grant a respondent's claim for a duty drawback adjustment where the respondent has demonstrated that there is (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipe Ltd.* v. *United States (Rajinder Pipes)*, 70 F. Supp. 2d 1350, 1358 (CIT 1999). In *Rajinder Pipes*, the Court of International Trade upheld the Department's decision to deny a respondent's claim for duty drawback adjustments because there was not substantial evidence on the record to establish that part one of the Department's test had been met. See also *Viraj Group, Ltd.* v. *United States*, Slip Op. 01–104 (CIT August 15, 2001).

In this administrative review, Venus and Viraj have failed to demonstrate that there is a link between the import duty paid and the rebate received, and that imported raw materials are used in the production of the final exported product. Therefore, because they have failed to meet the Department's requirements, we are denying the respondents' requests for a duty drawback adjustment. *See* the March 1, 2004, memorandum from Elizabeth Eastwood to the file entitled, "Calculations Performed for Venus Wire Industries Limited (Venus) for the Preliminary Results in the 2002–2003 Antidumping Duty Administrative Review on Stainless Steel Bars from India," (Venus preliminary results calculation memo) and the March 1, 2004, memorandum from Mike Strollo to the file entitled, "Calculations Performed for Viraj Group, Ltd. (Viraj) for the Preliminary Results in the 2002–2003 Antidumping Duty Administrative Review on Stainless Steel Bars from India," (Viraj preliminary results calculation memo) for further details.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the

foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales. We made adjustments to Viraj's reported data based on our findings at verification. *See* the Viraj preliminary results calculation memo.

B. Cost of Production

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Venus had made home market sales at prices below its COP in this review because the Department had disregarded home market sales that failed the cost test for this company in the most recently completed segment of this proceeding in which Venus participated (*i.e.*, the 1998–1999 administrative review). As a result, the Department initiated an investigation to determine whether these companies had made home market sales during the POR at prices below their COPs. *See Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (Aug. 10, 2000). In addition, on June 23, 2003, the petitioners submitted a timely allegation that Viraj made home market sales below the COP. We found that the petitioners' allegation provided a reasonable basis to believe or suspect that sales in the home market by Viraj had been made at prices below the COP. *See* the sales-below-cost allegation memo—Viraj.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for G&A, and interest expenses, and home market packing costs, where appropriate (*see* the "Test of Home Market Prices" section below for treatment of home market selling expenses).

We relied on the COP data submitted by the respondents, except where noted below:

Venus

1. We adjusted Venus' G&A expense ratio to include donations and exclude G&A expenses incurred by Precision Metals, an affiliated Indian selling agent; and

2. We adjusted Venus' interest expense ratio to exclude interest expenses incurred by Precision Metals.

For a detailed discussion of these adjustments, *see* the Venus preliminary results calculation memorandum.

Viraj

1. We based VAL's G&A and financing expenses on data from its 2002–2003 financial statements, rather than its 2001–2002 financial statements as reported;

2. We included the profit/loss on sales of motor cars in the calculation of VAL's G&A ratio;

3. We included the current year portion of ammortization expenses associated with a change in VAL's depreciation methodologies. *See* the memorandum to Neal Halper from Ji Young Oh entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Results," dated August 4, 2003, placed on the record of this administrative review.

4. We included all interest charges incurred by VIL during its 2002–2003 fiscal year in the calculation of VIL's financing ratio.

For a detailed discussion of the above-mentioned adjustments, *see* the Viraj preliminary results calculation memorandum.

2. Test of Home Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, commissions, discounts and indirect selling expenses. We revised indirect selling expenses to calculate POR expenses over POR sales. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product during the POR were at prices less than the COP, we did not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded these below-cost sales for both respondents and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSB for which there were no comparable home market sales in the ordinary course of trade, we compared EP to CV in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, selling, G&A, profit, and U.S. packing costs. We made the same adjustments to the CV costs as described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

C. Level of Trade

In accordance with section 773(a)(1)(B), to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution),[1]

[1] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain

including selling functions,[2] class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, (*i.e.*, NV based on either home market or third country prices[3]) we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make a level of trade adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61733.

Both Venus and Viraj claimed that they made home market sales at one LOT. We analyzed the information on the record and found that both respondents performed essentially the same marketing functions in selling to all of their home market customers, regardless of customer category (*i.e.*, end user and trading company). Therefore, we determined that both respondents made home market sales at one LOT.

Regarding Venus's U.S. sales, Venus reported that it made U.S. sales at two LOTs (*i.e.*, sales directly to unaffiliated U.S. customers and sales through an Indian affiliate, Precision Metals). We examined the selling functions this company performs and determined that additional selling functions were performed on certain U.S. sales. Specifically, we found that Venus performs an additional layer of selling functions on its sales through Precision Metals which are not performed on its direct sales to unaffiliated U.S. customers. Because these additional selling functions are significant, we find that Venus's sales through Precision Metals are at a different LOT than its direct sales to unaffiliated U.S. customers. Further, we find that Venus's direct sales to unaffiliated U.S. customers are at the same LOT as Venus's home market sales. Therefore, for these sales, no LOT adjustment is warranted. However, with respect to Venus' sales through its Indian affiliate, given that Venus sold at only one LOT in the home market, and there is no additional information on the record that would allow for a LOT adjustment, no LOT adjustment is possible for Venus.

Viraj reported the same LOT and channel of distribution for all its sales in both India and the United States. The U.S. selling activities differ from the home market selling activities only with respect to freight and delivery. These differences are not substantial. Therefore, we find that the CEP level of trade is the same as the home market LOT and an LOT adjustment is not necessary. Moreover, because there is no evidence on the record to indicate that the selling functions for sales to Viraj's home market were made at a different LOT than its U.S. sales, we are not granting a CEP offset adjustment, in accordance with 19 CFR 351.412(f).

D. Calculation of Normal Value

1. Venus

We based NV on the starting prices to home market customers. We made deductions, where appropriate, from the starting price for billing adjustments.[4] We also made deductions from the starting price, where appropriate, for foreign inland freight expenses, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments for credit expenses, commissions, and bank charges and bank interest expenses.[5] Specifically, in accordance with 19 CFR 351.410(e), we offset the commissions incurred in one market but not the other with indirect selling expenses incurred in the other market by the lesser of the commission or the indirect selling expense.

Where appropriate, we made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), for CV-to-EP comparisons, we made circumstance-of-sale adjustments for credit expenses, commissions, and bank charges and bank interest expenses.

2. Viraj

We based NV on the ex-factory starting prices to home market customers. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made a circumstance-of-sale adjustment for differences in credit expenses and commissions. Specifically, in accordance with 19 CFR 351.410(e), we offset the commissions incurred in the home market with indirect selling expenses incurred in the U.S. market by the lesser of the commission or the indirect selling expense.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

For CV-to-CEP comparisons, we made an adjustment, where appropriate, for differences in credit expenses and commissions, in accordance with section 773(a)(6)(C)(iii) and 773(a)(8) of the Act. Specifically, in accordance with 19 CFR 351.410(e), we offset the commissions incurred in the home

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of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

[4] Venus reported discounts in its home market sales listing. However, the information on the record indicates that these discounts are actually billing adjustments (*i.e.*, adjustments to price). Therefore, for the preliminary results, we have treated Venus's reported discounts as billing adjustments and adjusted gross unit price accordingly. *See* the Venus preliminary results calculation memorandum.

[5] Venus reported bank interest expenses charged on payments from U.S. customers as actual U.S. credit expenses incurred in Indian rupees. We have reclassified these expenses as direct selling expenses. *See* the Venus preliminary results calculation memo for further discussion.

market with indirect selling expenses incurred in the U.S. market by the lesser of the commission or the indirect selling expense.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily find the following weighted-average dumping margins:

Manufacturer/producer/exporter	Weighted-average margin percentage
Chandan Steel Limited	21.02
Isibars Limited	21.02
Jyoti Steel Industries	21.02
Venus Wire Industries Limited	0.06
Viraj Group, Ltd.	0.00

Because we are preliminarily revoking the order with respect to Viraj's exports of subject merchandise, if these results are unchanged in the final results of review, we will order CBP to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2003, and to refund all cash deposits collected.

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for Venus and Viraj, for those sales with a reported entered value, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding certain of Venus's sales, for assessment purposes, we do not have the information to calculate entered value because Venus was not the importer of record for the subject merchandise. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the CEPs and/or EPs. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to CBP.

Further, the following deposit requirements will be effective for all shipments of SSB from India, except those made by Viraj, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.45 percent, the "All Others" rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915, 66921 (Dec. 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 1, 2004.

James Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5135 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–825]

Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 8, 2004.

SUMMARY: We determine that wax and wax/resin thermal transfer ribbons (TTR) from France are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Liquidation* section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Sally Gannon at (202) 482–3148 and (202) 482–0162, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was issued on December 16, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons From France*, 68 FR 71068 (December 22, 2003) (*Preliminary Determination*). Since the publication of the preliminary determination, the following events have occurred. On January 5 and

January 16, 2004, petitioner, International Imaging Materials, Inc. (IIMAK), submitted additional comments regarding (1) its allegation that respondents in the three concurrent investigations of TTR (France, Japan, and South Korea) would attempt to circumvent the order by slitting jumbo rolls in third countries, and (2) its request that the Department therefore determine that slitting does not change the country of origin of TTR for antidumping purposes. On January 9, 2004, Armor, S.A. (Armor), the sole respondent in the French investigation, submitted additional comments on the country–of-origin issue. DigiPrint International (DigiPrint), a U.S. importer of TTR slit in India, submitted comments on January 2, 2004, on the country–of-origin issue. Refer to *Preliminary Determination* for a history of all previous comments submitted on this issue.

Scope of Investigation

This investigation covers wax and wax/resin thermal transfer ribbons (TTR), in slit or unslit ("jumbo") form originating from France with a total wax (natural or synthetic) content of all the image side layers, that transfer in whole or in part, of equal to or greater than 20 percent by weight and a wax content of the colorant layer of equal to or greater than 10 percent by weight, and a black color as defined by industry standards by the CIELAB (International Commission on Illumination) color specification such that L*<35, -20<a*<35, and -40<b*<31, and black and near–black TTR. TTR is typically used in printers generating alphanumeric and machine–readable characters, such as bar codes and facsimile machines.

The petition does not cover resin TTR, and finished thermal transfer ribbons with a width greater than 212 millimeters (mm), but not greater than 220 mm (or 8.35 to 8.66 inches) and a length of 230 meters (m) or less (*i.e.*, slit fax TTR, including cassetted TTR), and ribbons with a magnetic content of greater than or equal to 45 percent, by weight, in the colorant layer.

The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (HTSUS) at heading 3702 and subheadings 3921.90.40.25, 9612.10.90.30, 3204.90, 3506.99, 3919.90, 3920.62, 3920.99 and 3926.90. The tariff classifications are provided for convenience and Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

Country of Origin

As noted above, petitioner has requested that the Department determine that TTR produced in France (in jumbo roll, i.e., unslit form) that is slit in a third country does not change the country of origin for antidumping purposes. According to petitioner, because slitting does not constitute a "substantial transformation," French jumbo rolls slit in a third country should be classified as French TTR for antidumping purposes, and, therefore, within the scope of this investigation and any resulting order. Petitioner submitted comments on this request on October 28, 2003, December 5, 2003, January 5 and January 16, 2004. According to petitioner, substantial transformation does not take place because: 1) both slit and jumbo rolls have the same essential physical characteristics (*e.g.*, both have the same chemical properties that make them suitable for thermal transfer printing); 2) large capital investments are required for coating and ink–making (production stages prior to slitting), but not for slitting; 3) coating and ink–making require significantly more skill, expertise, and research and development; and, 4) the majority of costs and value comes from coating and ink–making. Petitioner states that, for purposes of this issue, slitting and packaging do not account for a substantial amount of the total cost of finished TTR (depending on the degree of automation and whether new or secondhand equipment is involved); and that a slitting operation requires a small amount of capital, compared with a large amount of capital required for a coating and ink–making operation.

Armor, the sole respondent in this investigation, argues that slitting does constitute substantial transformation, and, therefore, that the Department should determine that French jumbo rolls slit in a third country should be considered to have originated in that third country for antidumping purposes. Armor submitted comments on November 26, 2003, December 12, 2003, and January 9, 2004. Armor argues that substantial transformation does take place because: 1) slitting, and the repackaging that necessarily goes along with it, involves transforming the product into its final end–use dimensions, the insertion of one or two cores (for loading the ribbons into printers), and the addition of leaders, bridges, and trailers, which result in a new product, with a new name, new character, and new purpose; 2) petitioner excluded TTR slit to fax proportions, acknowledging the importance of slitting; and, 3) U.S. Customs and Border Protection (CBP) and the Court of International Trade (CIT) have determined that slitting and repackaging amount to substantial transformation. DigiPrint, in comments received on January 2, 2004, argues that the record of this investigation indicates that slitting and packaging account for a large amount (34%) of total cost, indicating substantial transformation.

The Department has considered several factors in determining whether a substantial transformation has taken place, thereby changing a product's country of origin. These have included: the value added to the product; the sophistication of the third–country processing; the possibility of using the third–country processing as a low cost means of circumvention; and, most prominently, whether the processed product falls into a different class or kind of product when compared to the downstream product. While all of these factors have been considered by the Department in the past, it is the last factor which is consistently examined and emphasized.[1] When the upstream and processed products fall into different classes or kinds of merchandise, the Department generally finds that this is indicative of substantial transformation. *See, e.g., Cold–Rolled 1993*, 58 FR at 37066.

Accordingly, the Department has generally found that substantial transformation has taken place when the upstream and downstream products fall within two different "classes or kinds" of merchandise: (*see, e.g.*, steel slabs converted to hot–rolled band; wire rod converted through cold–drawing to wire; cold–rolled steel converted to corrosion resistant steel; flowers arranged into bouquets; automobile chassis converted to limousines).[2] Conversely, the Department almost

[1] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold- Rolled Carbon Steel Flat Products From Argentina*, 58 FR 37062, 37066 (July 9, 1993) (Cold-Rolled 1993); *Final Determination of Sales at Less Than Fair Value; Limousines From Canada*, 55 FR 11036, 11040, comment 10 (March 26, 1990) (*Limousines*); *Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39692, comment 28 (October 30, 1986) (*EPROMs*); and, *Cold-Rolled 1993*, 58 FR at 37066; respectively.

[2] *Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From the United Kingdom*, 64 FR 30688, 30703, comment 13 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Fair Value-Stainless Steel Round Wire from Canada*, 64 FR 17324, 17325, comment 1 (April 9, 1999); *Cold-Rolled 1993*, 58 FR at 37066; *Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review*, 55 FR 20491, 20499, comment 49 (May 17, 1990); and, *Limousines*, 55 FR 11040; respectively.

invariably determines substantial transformation has not taken place when both products are within the same "class or kind" of merchandise: (*see, e.g.,* computer memory components assembled and tested; hot–rolled coils pickled and trimmed; cold–rolled coils converted into cold–rolled strip coils; rusty pipe fittings converted to rust free, painted pipe fittings; green rod cleaned, coated, and heat treated into wire rod).[3] In this case, both jumbo and slit TTR are within the same class or kind of merchandise, as defined in the Department's initiation and as defined for this final determination.

While slitting and packaging might account for 34 percent of the total cost of production,[4] the processes and equipment involved do not amount to substantial transformation of the jumbo TTR for antidumping purposes. According to information submitted by petitioner, and not rebutted by any party to this investigation, a slitting operation requires only a fraction of the capital investment required for a coating and ink–making operation.[5] Moreover, the ITC noted in this investigation that the "slitting and packaging process is not particularly complex, especially as compared to the jumbo TTR production process." *ITC Report*, at 7. The ITC also noted that the primary cost involved in a slitting and packaging operation is not capital cost, but direct labor cost, which, we note, might be hired cheaply in a third country. *Id.* at 14. Thus, it appears that a slitting operation could be established in a third country for circumvention purposes with far greater ease than a coating and ink–making operation.

Finally, the ITC concluded that, while slit and jumbo TTR are like products, U.S. slitting and packaging operations (or "converters") were not part of the domestic industry for purposes of this investigation, "for lack of sufficient production related activities." *Id.* at 13. The implication of the ITC's conclusion, based on its extensive multi–pronged analysis, is that TTR is the product of coating and ink–making, not slitting and packaging: "The production related activities of converters are insufficient for such firms to be deemed producers of the domestic like product." *Id.* While we are not bound by the ITC's decisions, the ITC's determination is important to consider in this particular instance because it is based on the full participation of respondents and petitioner, whereas respondent withdrew its information from our investigation.

As the Department has stated on numerous occasions, CBP decisions regarding substantial transformation and customs regulations, referred to by respondent, are not binding on the Department, because we make these decisions with different aims in mind (*e.g.*, anticircumvention). *See, e.g., DRAMs*, 67 FR at 70928. The Department's independent authority to determine the scope of its investigations has been upheld by the CIT. *Diversified Products Corp. v. United States*, 572 F. Supp. 883, 887 (CIT 1983). Presumably, a CIT decision interpreting substantial transformation in the context of CBP regulations, also cited by respondent, also is not binding on the Department.

While the other facts noted by respondent are not necessarily irrelevant to this determination, they do not overcome the conclusion indicated by the fact that the slitting and packaging of jumbo rolls into slit TTR does not create a "new and different article." In other words, the totality of the circumstances indicates that slitting does not constitute substantial transformation for antidumping purposes. Even accepting, *arguendo*, DigiPrint's statement regarding the amount of total cost accounted for by slitting and packaging, and respondent's statements regarding how slitting and packaging transform the product into its final end–use form, the product still has not changed sufficiently to fall outside the class or kind of merchandise defined in this investigation. Jumbo rolls are intermediate products, and slit rolls are final, end–use products, but the transformation of an upstream product into a downstream product does not necessarily constitute "substantial transformation" and, in this case, does not, given the considerations listed above.

Similarly, in *DRAMs*, we decided that wafers shipped to a third country to be used in the assembly of DRAMs (subject merchandise) did not amount to substantial transformation because the wafers were the "essential" component in the product. In this case, the ITC report notes petitioner's statement, unrefuted by respondents, that "the essential characteristic of finished TTR, like that of jumbo TTR, is that of a strip of PET film coated with ink." We agree and note that the essential characteristic is contained in the jumbo TTR imported into the third country.

Therefore, in light of this fact and the facts discussed below, we determine that slitting jumbo rolls does not constitute substantial transformation. Jumbo rolls originating in France but slit in a third country will be subject to any antidumping duties imposed on French TTR, if an antidumping duty order on such products is issued.

Period of Investigation

The period of investigation (POI) is April 1, 2002, through March 31, 2003.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondent, Armor, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because Armor withdrew its questionnaire responses from the record. *See Preliminary Determination*, 68 FR at 71069. The withdrawal of such information significantly impeded this proceeding because the Department cannot determine a margin without responses to our questionnaires. In addition, we found that Armor failed to cooperate to the best of its ability. We assigned Armor the highest margin listed in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigation: Thermal Transfer Ribbons From France, Japan and the Republic of Korea*, 68 FR 38305 (June

[3] *Notice of Initiation of Countervailing Duty Investigation: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 67 FR 70927, 70928 (November 27, 2002) (*DRAMs*); *EPROMs*, 51 FR at 39692; *Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan; Suspension of Investigation and Amendment of Preliminary Determination*, 51 FR 28396, 28397 (August 7, 1986); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 22183, 22186 (May 3, 2001); *Memorandum to Troy H. Cribb, Acting Assistant Secretary, from Holly Kuga, Acting Deputy Assistant Secretary, Issues and Decision Memorandum for the Investigation of Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Taiwan*, comment 1 (May 22, 2000); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Steel Wire Rod From Canada*, 62 FR 51572, 51573 (October 1, 1997); *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India*, 60 FR 10545, 10546 (February 27, 1995); respectively.

[4] The ITC report states that "[s]ix U.S. producers indicate that slitting and packaging accounts for an average of 34 percent of the cost of finished bar code TTR." Certain Wax and Wax/Resin Thermal Transfer Ribbons from France, Japan, and Korea, Investigations Nos. 731-TA-1039-1041 (Preliminary), (July 2003) (ITC Report), at 7. DigiPrint apparently is referring to this figure, when it refers to 34 percent in its January 2, 2004 submission. Figures placed on the record by petitioner related to this issue are proprietary, but indicate that the relevant figure might be significantly less than 34 percent, depending on the country in which the slitter is located, the type of equipment used, the degree of automation involved, and whether the process relies more on labor than capital.

[5] These figures agree with statements made by DNP, a respondent in the Japanese TTR investigation, recorded in the preliminary report by the U.S. International Trade Commission (ITC), that capital investment in a slitting operation was "generally very small" ($100,000 to $300,000). *Id.* at 14.

27, 2003). A complete explanation of the selection, corroboration, and application of adverse facts available can be found in the preliminary determination. *See Preliminary Determination*, 68 FR at 71070–71.Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available. No interested parties commented on any aspect of our application of adverse facts available. Accordingly, for the final determination, we continue to use the highest margin stated in the notice of initiation for Armor. The "All Others" rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation, except for the comments on the country–of-origin issue, which are fully addressed above. We received no case briefs or rebuttal briefs. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing CBP to continue to suspend liquidation of all entries of TTR exported from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Armor S.A.	60.60
All Others	44.93

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from France are materially injuring, or threatening material injury to, an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5163 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and the University of Maryland. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188 , fax 301–869–2751, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 01–004.

Title: Method For Producing Metal Particles by Spray Pyrolysis Using a Co-solvent and Apparatus Therefore.

Abstract: Gas-to-particle conversion processes have been used to produce various micro and nanoscale metal powders because of their convenient process characteristics. Recently, hydrogen gas approaches for reducing metal oxides made from metal precursor aerosols in gas-to-particle conversion processes were developed by several research groups. However, aerosol decomposition reactions may be very dangerous at high temperatures due to the explosive potential of hydrogen at high concentrations in the presence of oxygen. This invention is a novel process based on the use of a co-solvent for preparing pure metal nanoparticles under safe conditions in a high-temperature aerosol decomposition reactor. The resulting copper nanoparticles prepared from copper nitrate using a nitrogen carrier gas at 600° C with a 3.3 second resident time are pure. X-ray diffraction is used for measuring particle composition and a transmission electron microscope (TEM) is used for imaging to determine particle morphology.

Dated: March 1, 2004.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. 04–5166 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, March 16, 2004, from 8:30 a.m. until 5 p.m., Wednesday, March 17, 2004, from 8:30 a.m. until 5 p.m. and Thursday, March 18, 2004, from 8:30 a.m. until 1 p.m. All sessions will be open to the public. The Advisory Board

was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/*.

DATES: The meeting will be held on March 16, 2004, from 8:30 a.m. until 5 p.m., March 17, 2004, from 8:30 a.m. until 5 p.m. and March 18, 2004, from 8:30 a.m. until 1 p.m.

ADDRESSES: The meeting will take place at the Hyatt Regency Hotel Bethesda, 7400 Wisconsin Avenue, Bethesda, Maryland.

Agenda

- Welcome and overview;
- Customer Service Management (CRM) activities session;
- Review of budget history of NIST Information Technology Laboratory's Computer Security Division;
- Discussion of Federal IT security professional credentials;
- Update and re-evaluation of Board's Work Plan agenda;
- Agenda development for June 2004 ISPAB meeting;
- Wrap-up.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed 30 minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 25 copies of written material were submitted for distribution to the Board and attendees no later than March 9, 2004. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: March 1, 2004.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. 04–5165 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030104E]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

DATES: The meetings will be held on March 30–31, 2004. The Council will convene on Tuesday, March 30, 2004, from 9 a.m. to 5 p.m., and the Administrative Committee will meet from 5:15 p.m. to 6:15 p.m. The Council will reconvene on Wednesday, March 31, 2004, from 9 a.m. to 5 p.m., approximately.

ADDRESSES: The meetings will be held at the Mayaguez Resort and Casino, Rd.104, Km. 0.3, Mayaguez, Puerto Rico 00680.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Council will hold its 115th regular public meeting to discuss the items contained in the following agenda:

March 30, 2004, 9 a.m.–5 p.m.

Call to Order

Adoption of Agenda

Consideration of 113th and 114th Council Meeting Verbatim Minutes

Executive Director's Report

Proposed Rule (PR) New Regulations - Aida Rosario

Discussion of Essential Fish Habitat/ Environmental Impact Statement (EFH/ EIS) - Bob Trumble

5:15 p.m.–6:15 p.m.

Administrative Committee Meeting

Advisory Panel/Scientific and Statistical Committee/Habitat Advisory Panel Membership

Budget: 2002, 2003, 2004–5

Pending Travel and Contracts

Other Business

March 31, 2004, 9 a.m.–5 p.m.

Presentations:

Study on Costs and Earnings Trap Fishery - Juan Agar

Southeast Data and Review (SEDAR) - John Carmichael

Lobster Assessment - David Die

Discussion Sustainable Fisheries Act (SFA) Draft Document

Table 14

Closure Grammanic Bank

Enforcement Report

Puerto Rico

U.S. Virgin Islands

NOAA

U.S. Coast Guard

Administrative Committee Recommendations

March 30th, 2004

Meetings Attended by Council Members and Staff

Other Business

Next Council Meeting

The meetings are open to the public, and will be conducted in English. Simultaneous translation will be provided (English-Spanish). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: March 2, 2004.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–5185 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030104D]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings March 29 through April 6, 2004 in Anchorage, AK.

DATES: The meetings will be held on March 29 through April 6, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, March 29, and continue through Saturday, April 3rd, 2004. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, March 29, and continue through Wednesday, March 31, 2004.

The Council will begin its plenary session at 8 a.m. on Wednesday, March 31 continuing through Tuesday April 6. All meetings are open to the public except executive sessions. The Enforcement Committee will meet Monday, March 29.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
(a) Executive Director's Report
(b) NMFS Report
(c) Enforcement Report
(d) Coast Guard Report
(e) Alaska Department of Fish & Game Report
(f) U.S. Fish & Wildlife Report

2. Draft Programmatic Supplemental Environment Impact Statement (DPSEIS): (a) Final action on Groundfish Programmatic Supplemental Environmental Impact Statement; (b) Final Review of Groundfish Fishery Management Plan.

3. Habitat Area Particular Concern (HAPC): Receive report from Plan Team on HAPC proposals.

4. Aleutian Island Pollock: Initial Review of analysis to establish Adak pollock allocation.

5. Gulf of Alaska (GOA) Groundfish Rationalization: Discuss State water management issues.

6. Improved Retention/Improved Utilization (IR/IU): Receive progress report on Amendment 80 and provide input as necessary.

7. Observer Program: (a) Receive Observer Advisory Committee report; (b) Receive update on analysis and provide input as necessary.

8. Community Development Quota (CDQ): (a) Receive report on status of Bering Sea Aleutian Island Amendment 71; (b) Discuss fishery management issues.

9. National/Regional bycatch plans: Receive update.

10. Scallop Fishery Management Plan: Receive update and develop alternatives to modify the Licence Limitation Program.

11. Staff Tasking: Review tasking and provide direction to staff.

12. Other Business.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. Draft Programmatic Supplemental Environmental Impact Statement (DPSEIS)
2. HAPC
3. Aleutian Island Pollock
4. National/Regional bycatch plans.
5. Scallop Fishery Management Plan

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Enforcement Committee: The Enforcement Committee will meet during each meeting of the Council to discuss enforcement issues or concerns related to any subject on the Council agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 2, 2004.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–5184 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030104C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Information Policy Committee (Committee) will hold a working meeting, which is open to the public.

DATES: The Committee meeting will be held Tuesday, March 23, 2004 from 8 a.m. until business for the day is completed.

ADDRESSES: The Committee meeting will be held at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 249–7642.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Ed Waters, Fishery Economics Staff Officer Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Committee meeting is to formulate and recommend a groundfish information management policy to the Council. The recommended policy will categorize the types of and sources of information in use for groundfish

management, consider what new types of information may be available in the future, specify review requirements for new information before it can become part of the decision-making process, consider guidelines for replacing older information with new or updated information, and recommend an implementation time line that facilitates the groundfish management process while considering the magnitude of potential harm to the species of concern and disruption to the fishery that can result from untimely incorporation of new information.

No management actions will be decided by the Committee. The Committee's role will be development of recommendations for consideration by the Council at its April meeting in Sacramento, CA.

Although non-emergency issues not contained in the meeting agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 2, 2004.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–5167 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030104F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee (Committee) will hold a working meeting, which is open to the public.

DATES: The Committee meeting will be held Wednesday, March 24, 2004, from 8 a.m. until business for the day is completed. The Committee meeting will reconvene on Thursday, March 25, 2004, from 8 a.m. until business is completed.

ADDRESSES: The Committee meeting will be held at the Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 249–7642.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Fishery Management Coordinator; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Committee meeting is to develop options for allocations and other management measures for the 2005–06 Pacific Coast groundfish fishery. The Committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. In addition, the Committee may evaluate current catch levels of overfished groundfish species and propose inseason adjustments. No management actions will be decided by the Committee. The Committee's role will be the development of recommendations for consideration by the Pacific Fishery Management Council at its April meeting in Sacramento, CA.

Although non-emergency issues not contained in the meeting agenda may come before the Committee for discussion, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Committee's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: March 2, 2004.

Peter H. Fricke,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–5186 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013004C]

Marine Mammals; File Nos. 655–1652 and 775–1600

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit and permit amendment.

SUMMARY: Notice is hereby given that Scott D. Kraus, Ph.D., Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 02110–3309 has been issued a permit to take northern right whales (*Eubalaena glacialis*) for purposes of scientific research. The Northeast Fisheries Science Center, NMFS,166 Water Street, Woods Hole, Massachusetts 02543–1026 [Principal Investigator (PI): Dr. John Boreman] has been issued a major amendment to Permit No. 775–1600–06 to take northern right whales for purposes of scientific research.

ADDRESSES: The permit, permit amendment, and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: *File No. 655–1652.* On October 16, 2001, notice was published in the **Federal Register** (66 FR 52594) that a request for a scientific research permit to take northern right whales had been

submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 65–1652–00 authorizes Dr. Kraus to conduct research involving monitoring the health and status of North Atlantic right whales, including aerial and shipboard surveys, photo-identification, remote biopsy sampling, attachment of scientific instruments, and blubber ultrasound measurements. Up to 300 whales per year may be taken for up to five years.

File No. 775–1600. On October 27, 2000, notice was published in the **Federal Register** (65 FR 64432) that a request for a scientific research permit to take seven species of baleen whale, 21 species of odontocetes, and four species of pinnipeds had been submitted by the above-named organization. Permit No. 775–1600–00 was issued on March 6, 2001 (66 FR 14135) and subsequently amended six times for various reasons. Permit No. 775–1600–00 and its subsequent amendments prohibited biopsy sampling of right whale calves less than six months old and females accompanied by such calves. The Permit Holders requested reconsideration of this prohibition and provided additional information in support of their request to biopsy sample calves of any age (except newborns) and females accompanied by such calves. NMFS did not publish a notice in the **Federal Register** regarding receipt of the request because the original application, which was available for public review and comment, requested such authorization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Issuance of this permit and permit amendment, as required by the ESA, was based on a finding that such permit and permit amendment (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 1, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–5189 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030204A]

Marine Mammals; File No. 881–1745

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center (ASLC), P.O. Box 1329, Seward, Alaska 99664 (Dr. Shannon Atkinson, Principal Investigator), has applied for a permit to take Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 7, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov.* Include in the subject line of the e-mail comment the following document identifier: File No. 881–1745

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Dr. Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The ASLC requests a 5–year permit to continue its research on three permanently captive Steller sea lions held by the ASLC to investigate stress responses, endocrine and immune system function, and seasonal variations to normal biological parameters such as mass and body composition, and to conduct research and development of external tags and attachments for future deployment in the field. These animals will also be used to develop and test less intrusive methods that can be used in the field. Authorization is requested: (1) for attachment of scientific instruments, stomach temperature telemetry, stable isotope administration via food or intravenously, oral administration of deuterium labeled vitamins, and video/photographic/radiographic/digital/thermal imaging; (2) for collecting morphometric data, blubber ultrasound measurements, blood samples, epidermal and mucosal swabs, blubber biopsies, and bioenergetic and metabolic measurements; (3) for conducting bioelectrical impedance analysis, hormone stimulation trials, food trials/dietary manipulation/fasting studies, underwater foraging and drag trials; and (4) for determining body condition via D20 injections and total blood volume via Evans blue dye injection.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 3, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–5188 Filed 3–5–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Air Force

Notice of Intent To Perform an Environmental Analysis for the Removal of Used Depleted Uranium Targets From Nevada Test and Training Range

AGENCY: United States Air Force, Air Combat Command.

ACTION: Notice of intent to prepare an Environmental Assessment (EA) for the Removal of Used Depleted Uranium Targets from the Nevada Test And Training Range (NTTR).

SUMMARY: The United States Air Force is issuing this Notice of intent (NOI) to announce that it is conducting an Environmental Assessment (EA) to describe the proposed action for removal of used depleted uranium (DU) targets used by A–10 aircraft firing the 30-Millimeter PGU–14/B API Armor Piercing Incendiary round containing sub-caliber high density DU penetrators from the Nevada Test and Training Range (NTTR). This NOI describes the Air Force's proposed scoping process and identifies the Air Force's point of contact.

The proposed EA will be prepared in compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347), the Council on Environmental Quality NEPA Regulations (40 CFR 1500–1508); and the Air Force's Environmental Impact Analysis Process (EIAP) (Air Force Instruction 32–7061 as promulgated at 32 CFR 989) to determine the potential environmental impacts of removing targets formerly used by A–10 aircraft for DU testing and training at the NTTR.

As part of the proposal, the Air Force will analyze various disposal alternatives for DU contaminated targets and debris currently located in the 60-Series Ranges (Target 63–10) in the Southwest area of NTTR. Because the targets and debris are in various conditions and have varied levels of contamination the Air Force requires flexibility in considering alternatives to dismantle, transport, and dispose/reuse the targets. The targets to be disposed fall into two basic categories: (1) Targets that can be decontaminated because the DU exists as surface contamination or the DU penetrator remains in the entry hole; and (2) targets that can not be decontaminated because the DU has fused into large areas of the target and it no longer qualifies as a usable target.

DATES: The Air Force will conduct a series of scoping meetings to receive public input on alternatives, concerns, and issues to be addressed in the EA and to solicit public input concerning the scope of the proposed action and alternatives. The schedule and locations of the scoping meetings are as follows:

March 23, 2004, 6 p.m.–8 p.m. Sunrise Library, 5400 Harris Ave., Las Vegas, Nevada

March 24, 2004, 6 p.m.–8 p.m. Indian Spring Community Center, 719 West Gretta Lane, Indian Springs, Nevada

March 25, 2004, 6 p.m.–8 p.m. Bob Ruud Community Center, Main Hall, 150 North Highway 160, Pahrump, Nevada

The Air Force will accept comments at any time during the environmental analysis process. However, to ensure the Air Force considers relevant scoping issues in a timely fashion, all comments should be forwarded to the address below, no later than April 20, 2004. If during the preparation of the EA, the Air Force concludes an Environmental Impact Statement (EIS) is warranted, comments received during this scoping period will be considered in the preparation of the EIS.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Parker, HQ ACC/CEVP, 129 Andrews St., Suite 102, Langley AFB, VA 23665–2769, (757) 764–9334

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 04–5131 Filed 3–5–04; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Early Reading First; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.359A/B.

Dates:

Applications Available: March 8, 2004 (pre- and full applications).

Deadline for Transmittal of Pre-Applications: April 22, 2004.

Deadline for Transmittal of Applications: July 1, 2004 (for applicants invited to submit full applications only).

Deadline for Intergovernmental Review: August 30, 2004.

Eligible Applicants: The term "eligible applicant" means the following: (a) One or more local educational agencies (LEA) that are eligible to receive a subgrant under the Reading First program (title I, part B, subpart 1, Elementary and Secondary Education Act of 1965, as amended (ESEA)), (b) one or more public or private organizations or agencies (including faith-based organizations) located in a community served by an eligible LEA; or (c) one or more of the eligible LEAs, applying in collaboration with one or more of the eligible organizations or agencies. To qualify under (b) of this paragraph, the organization's or agency's application must be on behalf of one or more programs that serve preschool-age children (such as a Head Start program, a child care program, or a family literacy program such as Even Start, or a lab school at a university), unless the organization or agency itself operates a preschool program.

Estimated Available Funds: $94,439,000.

Estimated Range of Awards: $750,000–$4,500,000.

Estimated Average Size of Awards: $2,500,000.

Estimated Number of Awards: 21–125.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program supports local efforts to enhance the oral language, cognitive, and early reading skills of preschool-age children, especially those from low-income families, through strategies, materials, and professional development that are grounded in scientifically based reading research.

Priorities: Under this competition we are particularly interested in applications that address the following invitational and competitive priorities.

Invitational Priorities: For FY 2004 these priorities are invitational priorities. Under 35 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1—Intensity

The Secretary is especially interested in preschool programs that operate full-time, full-year early childhood

educational programs, at a minimum of 6.5 hours per day, 5 days per week, 46 weeks per year, and that serve children for the two consecutive years prior to their entry into kindergarten.

Scientifically based research on increasing the effectiveness of early childhood education programs serving children from low-income families tells us that children attending such programs that have a greater intensity of service make higher and more persistent gains in the language and cognitive domains than children who attend early childhood programs that have lesser intensity of service. In other words, children who spend more time in high-quality early childhood education programs learn more than children who spend less time in those programs. The purpose of Invitational Priority 1 is to encourage preschool programs supported with Early Reading First (ERF) funds to provide services that are of a sufficient duration and intensity to maximize language and early literacy gains for children enrolled in those programs.

Invitational Priority 2—Children From Low-Income Families

The Secretary is especially interested in projects in which, in all preschool centers supported by the ERF funds, at least 75 percent of the children enrolled in the preschool qualify to receive free or reduced priced lunches; or at least 75 percent of the children enrolled in the elementary school in the school attendance area in which that center is located qualify to receive free or reduced priced lunches.

One of the statutory purposes of the ERF program is to enhance the early language, literacy, and early reading development of preschool-age children, particularly those from low-income families. This priority is intended to increase the likelihood that preschool programs supported with ERF funds serve children primarily from low-income families.

Competitive Preference Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from § 75.225 of the Education Department General Administrative Regulations (EDGAR), which apply to this program (34 CFR 75.225).

Competitive Preference Priority—Novice Applicant

For FY 2004 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to a pre-application and an additional 5 points to a full application meeting this competitive priority.

This priority is:

Novice Applicant

The applicant must be a "novice applicant" as defined in 34 CFR 75.225.

Program Authority: 20 U.S.C. 6371–6376.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $94,439,000.

Estimated Range of Awards: $750,000–$4,500,000.

Estimated Average Size of Awards: $2,500,000.

Estimated Number of Awards: 21–125.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The term "eligible applicant" means the following: (a) One or more LEAs that are eligible to receive a subgrant under the Reading First program (title I, part B, subpart 1, ESEA), (b) one or more public or private organizations or agencies (including faith-based organizations) located in a community served by an eligible LEA; or (c) one or more of the eligible LEAs, applying in collaboration with one or more of the eligible organizations or agencies. To qualify under (b) of this paragraph, the organization's or agency's application must be on behalf of one or more programs that serve preschool-age children (such as a Head Start program, a child care program, or a family literacy program such as Even Start, or a lab school at a university), unless the organization or agency itself operates a preschool program.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain the application package electronically by downloading it from the ERF Web site: *http://www.ed.gov/programs/earlyreading/applicant.html.*

You may also contact Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.359A/B.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of the pre-application and the full application, together with the forms you must submit, are in the application package for this program. Page Limits: The pre-application narrative and the full application narrative for this program (Part II of the pre- and full applications) are where you, the applicant, address the selection criteria that reviewers use to evaluate your pre- and full applications. You must limit Part II of the pre-application to the equivalent of no more than 10 pages and Part II of the full application to the equivalent of no more than 35 pages. Part III of the full application is where you, the applicant, provide a budget narrative that reviewers use to evaluate your full application. You must limit the budget narrative in Part III of the full application to the equivalent of no more than 5 pages. Part IV of the full application is where you, the applicant, provide up to 5 resumes (curriculum vita) and the demonstration of stakeholder support for the project that reviewers use to evaluate your full application. You must limit each resume to the equivalent of no more than 3 pages each and limit the demonstration of stakeholder support for the project to the equivalent of no more than 5 pages. For all page limits, use the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, quotations, and references included in the body of the narrative.
- Text in endnotes, charts, tables, figures, and graphs may be single-spaced.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limits do not apply to Part I, the cover sheet and the one-page abstract; or the following portions of the full application: Part III, the budget; or Part IV, the assurances and certifications; and the endnotes.

Our reviewers will not read any pages of your pre-application or full application that—

• Exceed the page limit if you apply these standards; or

• Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: March 8, 2004 (pre- and full applications).

Deadline for Transmittal of Pre-Applications: April 22, 2004.

Deadline for Transmittal of Full Applications: July 1, 2004 (for applicants invited to submit full applications only).

The dates and times for the transmittal of pre- and full applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

We do not consider a pre-application or a full application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: August 30, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of pre-applications and full applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications:

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Early Reading First—CFDA Number 84.359A/B is one of the programs included in the pilot project. If you are an applicant under Early Reading First, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

• Your participation is voluntary.

• When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for Early Reading First and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and you have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for Early Reading First at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* This program has separate selection criteria for pre-applications and full applications.

A. *Pre-applications:* The following selection criteria for pre-applications are in section 75.210 of EDGAR. Further information about each of these selection criteria is in the application package. The maximum score for the pre-application selection criteria is 100 points. The maximum score for each criterion is indicated at the end of that criterion.

(i) *Quality of the project design.* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of

the proposed project, the Secretary considers the following factor:

(a) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements. (34 CFR 75.210(c)(2)(xiv))

We will award pre-applicants from 0–70 points for the quality of the project design.

(ii) *Quality of project services.* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(d)(1),(2))

In addition, the Secretary considers the following factors:

(a) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (34 CFR 75.210(d)(3)(iii))

(b) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards. (34 CFR 75.210(d)(3)(vii))

We will award pre-applicants from 0–30 points for the quality of project services.

B. *Full Application:* The following selection criteria for those invited to submit full applications are in section 75.210 of EDGAR. Further information about each of these selection criteria is in the application package. The maximum score for each criterion is indicated at the end of the criterion.

(i) *Quality of the project design.* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factor:

(a) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements. (34 CFR 75.210(c)(2)(xiv))

We will award applicants from 0–35 points for the quality of the project design.

(ii) *Quality of project services.* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(d)(1),(2))

In addition, the Secretary considers the following factors:

(a) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (34 CFR 75.210(d)(3)(iii))

(b) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards. (34 CFR 75.210(d)(3)(vii))

We will award applicants from 0–15 points for the quality of project services.

(iii) *Quality of project personnel.* The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (34 CFR 75.210(e)(1),(2))

In addition, the Secretary considers the following factors:

(a) The qualifications, including relevant training and experience, of the project director or principal investigator. (34 CFR 75.210(e)(3)(i))

(b) The qualifications, including relevant training and experience, of key project personnel. (34 CFR 75.210(e)(3)(ii))

(c) The qualifications, including relevant training and experience, of project consultants or subcontractors. (34 CFR 75.210(e)(3)(iii))

We will award applicants from 0–10 points for the quality of project personnel.

(iv) *Adequacy of resources.* The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(a) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (34 CFR 75.210(f)(2)(ii))

(b) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210(f)(2)(iv))

We will award applicants from 0–10 points for adequacy of resources.

(v) *Quality of the management plan.* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (34 CFR 75.210(g)(2)(i))

(b) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (34 CFR 75.210(g)(2)(ii))

(c) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (34 CFR 75.210(g)(2)(iv))

We will award applicants from 0–10 points for the quality of the management plan.

(vi) *Quality of the project evaluation.* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (34 CFR 75.210(h)(2)(i))

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (34 CFR 75.210(h)(2)(iv))

We will award applicants from 0–10 points for the quality of the project evaluation.

(vii) *Significance.* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factor:

(a) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (34 CFR 75.210(b)(2)(vi))

We will award applicants from 0–10 points for the significance of the proposed project.

VI. Award Administration Information

1. *Award Notices:* If your pre-application is successful, we notify you in writing and post the list of successful applicants on the ERF Web site at *www.ed.gov/programs/earlyreading/awards.html.* If your full application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your pre-application is not evaluated, or following the submission of your pre-application you are not invited to submit a full application, we notify you. If your full application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. ERF grantees also are required to meet the reporting requirements outlined in section 1225 of the ESEA.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Secretary has established the following two measures for evaluating the overall effectiveness of the ERF program: (1) Increasing percentages of preschool-age children will demonstrate age-appropriate oral language skills; and (2) increasing percentages of preschool-age children will demonstrate letter knowledge.

We will expect all grantees to document their success in addressing these performance measures in the annual performance report referred to in section VI.3. of this notice.

VII. Agency Contact

For Further Information Contact: Mary Anne Lesiak, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W240, Washington, DC 20202–6132. Telephone: (202) 260–2195 or by e-mail: *MaryAnne.Lesiak@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 3, 2004.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 04–5149 Filed 3–5–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Alcohol and Other Drug Prevention Models on College Campuses Grant Competition; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184N

DATES: *Applications Available:* March 8, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

Deadline for Intergovernmental Review: June 16, 2004.

Eligible Applicants: Institutions of higher education (IHEs) that offer an associate or baccalaureate degree. To be eligible, an IHE must not have received an award during the previous five fiscal years under recognition programs (CFDA 84.116X or 84.184N) prior to enactment of the No Child Left Behind Act of 2001 (NCLB).

Estimated Available Funds: $750,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applications from this competition.

Estimated Range of Awards: $50,000–$125,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 15 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Alcohol and Other Drug Prevention Models on College Campuses grant competition provides awards to identify, enhance, further evaluate, and disseminate information about models of alcohol and other drug prevention at IHEs.

Priority: We are establishing this priority for this competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232(d)(1)).

Absolute Priority: For this competition this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Identify, enhance, further evaluate, and disseminate information about an effective alcohol or other drug prevention program being implemented on the applicant's campus. Under this priority, applicants are required to:

(1) Describe an alcohol or other drug prevention program that has been implemented for at least two full academic years on the applicant's campus;

(2) Provide evidence of the effectiveness of the program;

(3) Provide a plan to enhance and further evaluate the program during the project period; and

(4) Provide a plan to disseminate information to assist other IHEs in implementing a similar program.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority and certain selection process requirements. Section 437(d)(1) of GEPA, however, exempts from this requirement rules governing the first grant competition under a new or substantially revised program authority. This is the first Alcohol and Other Drug Prevention

Models on College Campuses grant competition under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the NCLB. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority and selection process requirements under section 437(d)(1) of GEPA. This priority and certain selection process requirements will apply to this grant competition only.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $750,000. Contingent upon the availability of funds, the Secretary may make additional awards in FY 2005 from the rank-ordered list of unfunded applications from this competition.

Estimated Range of Awards: $50,000–$125,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 15 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) that offer an associate or baccalaureate degree. To be eligible, an IHE must not have received an award during the previous five fiscal years under recognition programs (CFDA 84.116X or 84.184N) prior to enactment of the NCLB.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application via the Internet or from the program office. To obtain a copy via the Internet use the following address: *http://www.ed.gov/programs/dvpcollege/index.html.* To obtain a copy from the program office, write or call the following: Kimberly Light, U.S. Department of Education, Office of Safe and Drug-Free Schools, 400 Maryland Avenue, SW., room 3E222, Washington, DC 20202–6450. Telephone: (202) 260–2647 or by e-mail: *kimberly.light@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at: 1–800–877–5339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: March 8, 2004.

Deadline for Transmittal of Applications: April 16, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 16, 2004.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including courier service or commercial carrier) are in the application package for this competition.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Alcohol and Other Drug Prevention Models on College Campuses grant competition—CFDA number 84.184N is one of the programs included in the pilot project. If you are an applicant under the Alcohol and Other Drug Prevention Models on College Campuses grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award Number (an identifying number unique to your application).

Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Alcohol and Other Drug Prevention Models on College Campuses Grant Competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order

to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under for Further Information Contact (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Alcohol and Other Drug Prevention Models on College Campuses Grant Competition at: *http://e-grants.ed.gov.*

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are in 34 CFR 75.210 and in the application package for this competition.

2. *Review and Selection Process:* In addition to the selection criteria, in making awards under this grant program, the Secretary may take into consideration the diversity of activities addressed by the projects in addition to the rank order of applicants.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Kimberly Light, U.S. Department of Education, Office of Safe and Drug-Free Schools, 400 Maryland Avenue, SW., room 3E222, Washington, DC 20202–6450. Telephone: (202) 260–2647 or by e-mail: *kimberly.light@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 2, 2004.

Deborah A. Price,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 04–5154 Filed 3–5–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting; Republication

Editorial Note: FR Doc. 04–4809 originally published in the issue of Wednesday, March 3, 2004 at 69 FR 10043. This document is being republished because the agency name was printed and indexed incorrectly. This document is being reprinted in its entirety.

AGENCY: United States Election Assistance Commission.

* * * * *

DATE AND TIME: Tuesday, March 23, 2004, at 10 a.m.

PLACE: 1201 Constitution Ave., NW., Washington, DC (EPA East Building, room 1153).

STATUS: This meeting will be open to the public.

Note: Early arrival: Those attending are advised to arrive early for registration and security check.

PURPOSE: Organizational plans for the newly established United States Election Assistance Commission.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 694–1095.

DeForest B. Soaries, Jr.,

Chairman, United States Election Assistance Commission.

[FR Doc. 04–4809 Filed 3–5–04; 10:12 am]

Editorial Note: FR Doc. 04–4809 originally published in the issue of Wednesday, March 3, 2004 at 69 FR 10043. This document is being republished because the agency name was printed and indexed incorrectly. This document is being reprinted in its entirety.

[FR Doc. R4–4809 Filed 3–5–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Compliance Statement: Energy/Water Conservation Standards for Appliances, OMB Control Number 1910–1400. This information collection package covers information necessary to collect information from manufacturers to determine whether products covered under the Energy Policy and Conservation Act (EPCA or the Act) and part 430 of title 10 of the Code of Federal Regulations (10 CFR 430) comply with required energy conservation and water conservation

standards before these products can be distributed in commerce.

DATES: Comments regarding this collection must be received on or before April 7, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–7345.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Susan L. Frey, Director, Records Management Division IM–11/ Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290, and to Regina Washington, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Susan L. Frey, Director, Records Management Division, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290, (301) 903–3666, or e-mail *susan.frey@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.* 1910–1400; (2) *Package Title:* Compliance Statement: Energy/Water Conservation Standards for Appliances; (3) *Purpose:* DOE will collect information from manufacturers to verify that products covered under the Act comply with required energy conservation and water conservation standards prior to distributing these products in commerce. DOE will make a determination of compliance by examining manufacturer's compliance statements and certification reports that each basic model meets the applicable energy and water conservation standard as prescribed in section 325 of the Act. (4) *Estimated Number of Respondents:* 48; (5) *Estimated Total Burden Hours:* 1,347; (6) *Number of Collections:* The package contains 14 information and/or recordkeeping requirements.

Statutory Authority: EPCA mandates the use of uniform energy and water conservation standards and testing procedures for covered products. DOE has previously established compliance reporting requirements in § 430.62 of title 10 CFR 430. The authority for certification reporting under part 430 is section 326(d) of part B of title III of EPCA which states:

"For purposes of carrying out this part, the Secretary may require, under this part [42 U.S.C. 6291 *et seq.*] or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product . . . to ensure compliance with the requirements of this part." 42 U.S.C. 6296(d).

Issued in Washington, DC, on March 2, 2004.

Susan L. Frey,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–5121 Filed 3–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–249–A]

Application to Export Electric Energy; Exelon Generation Company, LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Exelon Generation Company, LLC (Exelon) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 23, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (fax 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Rosalind Carter (Program Office) 202–586–7983 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 20, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA–249 authorizing Exelon to transmit electric energy from the United States to Canada as a power marketer using certain international electric transmission facilities. That two-year authorization expired on October 15, 2003.

On January 30, 2004, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Exelon to renew its authorization to transmit electric energy from the United States to Canada for a period of five (5) years. Exelon requests that, if DOE approves this application, the order authorizing it to export be made effective as of October 15, 2003, because Exelon has inadvertently continued to trade power since that date. Exelon also has requested expedited processing of this application. Accordingly, DOE has shortened the public comment period to 15 days.

Exelon proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Exelon, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Exelon application to export electric energy to Canada should be clearly marked with Docket EA–249–A. Additional copies are to be filed directly with Colleen E. Hicks, Attorney, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the

reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy home page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC on March 2, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–5122 Filed 3–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–04ER04–16; Integrated Assessment of Climate Change Research

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces interest in receiving applications for the Integrated Assessment of Climate Change Research Program. The program funds research that contributes to integrated assessment of climate change, and in particular, research to develop and improve methods and tools that focus on specialized topics of importance to integrated assessments. The research program supports the Administration's Climate Change Science Program goals to understand, model, and assess the effects of increasing greenhouse gas concentrations in the atmosphere. The program places special emphasis on developing methods to evaluate economic and other costs and benefits of climate change under "what if" scenarios that include policy interventions to mitigate greenhouse gas emissions.

All applications submitted in response to this notice must explicitly state how the proposed research will support accomplishment of the BER Climate Change Research Division's Long Term Measure of Scientific Advancement to deliver improved data and models to determine acceptable levels of greenhouse gases in the atmosphere.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. There is no deadline for the preapplication, but early submission of preapplications is encouraged to allow time for meaningful discussions.

The deadline for receipt of formal applications is 4:30 p.m., eastern time, May 11, 2004, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2004 and early Fiscal Year 2005.

ADDRESSES: Preapplications, referencing Program Notice DE–FG01–04ER04–16, should be sent e-mail to *john.houghton@science.doe.gov*.

Formal applications referencing Program Notice DE–FG01–04ER04–16, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Climate Change Research Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290, telephone: (301) 903–8288, e-mail: *john.houghton@science.doe.gov*, fax: (301) 903–8519. The full text of Program Notice DE–FG01–04ER04–16, is available via the World Wide Web using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html*.

SUPPLEMENTARY INFORMATION: An integrated assessment of climate change is defined here as the analysis of the human (including economics), physical, and biological aspects of climate change from the cause, such as greenhouse gas emissions, through impacts, such as changes in unmanaged ecosystems, sea level rise, and altered growing conditions for crops. The primary emphasis in an integrated assessment is to represent all three aspects in such a way that the costs and benefits of climate change can be evaluated. Integrated assessments are commonly based on simulated scenarios using a computer model.

A description of integrated assessment may be found in volume 3 of the report "Intergovernmental Panel on Climate Change (IPCC) Third Assessment Report: Climate Change 2001". The reference is: Ferenc Toth, Mark Mwandosya, John Christiansen, Jae Edmonds, Brian Flannery, Carlos Gay-Garcia, Hoesung Lee, Klaus Meyer-Abich, Elena Nikitina, Atiq Rahman, Richard Richels, Ye Riqui, Arturo Villavicencio, Yoko Wake, and John Weyant, "Decision-Making Frameworks," Chapter 10 in Climate Change 2001: Mitigation, Cambridge University Press, 2001 (*http://www.ipcc.ch/pub/reports.htm*).

Integrated assessment models are used to evaluate, for example, specific policy options. This notice solicits research to develop and improve the methods and tools used to assess the costs and benefits of climate change. The research funded as a result of this solicitation will be judged in part on its potential to develop and improve integrated assessment methods and models needed to support policy analysis and development. Policy analysis and development itself will not be funded.

The program will concentrate support on the topics described below. Applications that involve development of analytical models and computer codes will be judged partly on the basis of whether they include proposed tasks to document and make the models and model codes available to the community. The following is a list of

topics that are high priority. Topics proposed by principal investigators that fall outside this list will require a preapplication and a strong justification to be considered for funding. Research projects in these elements are intended to fill critical gaps in current integrated assessments.

A. Technology Innovation and Diffusion

Research to develop and improve methods and models for assessing the benefits and costs of innovation and diffusion of technologies that affect the emission of greenhouse gases is a primary focus of the Integrated Assessment of Climate Change Research Program. Assumptions regarding technology innovation and diffusion are some of the most important contributors to overall uncertainty in predicting future emissions of greenhouse gases from technologies. A key area of interest is research to improve the ability of the integrated assessment models to represent technological changes that directly or indirectly affect greenhouse gas emissions as a function of variables that are determined by the model ("endogenizing technological change") rather than postulated as static input to the model.

One particular difficulty in modeling technological change is in representing the penetration of new technologies. Over the 21st century, the typical timeframe simulated using the integrated assessment models, technologies need to be invented, innovated upon, and diffused to the sectors in which they are used. Applications are sought that address issues such as: (1) The rate at which technological changes take place, (2) identification of factors that affect the rates, (3) the representation of the adoption of new technologies in which the model assigns a price lower for the new technology than for competing technologies, and (4) whether, and if so, how, historical precedents can be used to better understand technology innovation and diffusion processes and rates and therefore lead to better modeling of such processes and rates.

The rate and nature of technology diffusion from the more-developed nations to developing nations is not well understood. Predicting economic structural changes in developing nations that influence technology diffusion is also problematical. Much of the uncertainty in integrated assessment models comes from the difficulty in predicting the response of the energy sector and greenhouse gas emissions in developing nations to both regulation and technological innovations in more-developed nations. Applications are sought to understand how historical precedents can be used to understand and model the future movement of technologies across national borders.

Applications are also sought for research that will help provide tools to address other policy-relevant questions, such as the following, as they relate to greenhouse gas emissions:

- What effect would various policy options have on "carbon leakage", the movement of emissions of greenhouse gases away from nations with relatively regulated emissions to ones with relatively unregulated emissions?
- How can the impact of research and development on invention, innovation, and adoption of technologies that emit greenhouse gases be simulated and modeled quantitatively?

B. Improve Methods for Constructing Emission Scenarios Used To Drive Integrated Assessment Models

The Intergovernmental Panel on Climate Change has published a Special Report on Emission Scenarios (SRES) *(http://www.ipcc.ch/pub/reports.htm#sprep)*. These scenarios describe various possible directions for future development and are used as input into the Integrated Assessment models. The scenarios include projections of economic growth, population dynamics, and technology development that vary by time and locale.

This notice solicits research to improve on the existing methodologies for developing emission scenarios and to enhance the current SRES scenarios. Enhancing the current SRES scenarios should make use of recent updates to demographic projections. Forecasts of productivity growth, particularly in lesser developed countries, should cover the range of likely outcomes. Some scenarios should represent possible policy interventions to reduce greenhouse gas emissions, such as mitigation options that would lead to various stable atmospheric concentration levels. Forecasts of technology improvements should be tied to assumptions regarding mitigation options.

Program Funding

It is anticipated that up to $2,000,000 will be available for multiple awards to be made in Fiscal Year 2004 and early Fiscal Year 2005, in the categories described above, contingent on the availability of appropriated funds. Additional funds will be made available for a similar program announcement to the DOE National Laboratories. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs. Annual budgets for project applications are expected to range from $50,000 to $175,000 total costs. Funds for this research will come from the Integrated Assessment Research Program. DOE is under no obligation to pay for any costs associated with preparation or submission of applications.

Preapplications

A preapplication is strongly encouraged (but not required) prior to submission of a full application. The preapplication should list the Principal Investigator's name, institution, address, telephone number, and e-mail address; title of the project; and proposed collaborators. The preapplication should consist of a one to two page narrative describing the research project objectives and methods of accomplishment. A response to each preapplication, discussing the potential program relevance of a formal application, generally will be communicated within 15 days of receipt. There is no deadline for the submission of preapplications, but applicants should allow sufficient time to meet the application deadline. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following evaluation criteria which are listed in descending order of importance codified at 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources;
4. Reasonableness and appropriateness of the proposed budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Both Federal and non-Federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Application Guide and required forms is made available via the World Wide Web: *http://www.sc.doe.gov/production/grants/grants.html.*

In addition, for this notice, the research description must be 15 pages or less (10-point or larger font), including figures and tables but excluding attachments, and must include a one-page summary of the proposed project. The summary should appear on a separate page (page 1) and must include the proposed-project title; name of the applicant and the applicant's address, phone number, and e-mail address; names of any co-investigators; and the proposed-project summary. Attachments should include literature references cited in the research description, curriculum vitae for each investigator (2-page maximum per investigator), a listing of all current and pending Federal support for each investigator, and letters of intent when collaborations are part of the proposed research.

For researchers who do not have access to the World Wide Web (www), please contact Karen Carlson, Office of Biological and Environmental Research, Climate Change Research Division, SC–74/Germantown Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, phone: (301) 903–3338, fax: (301) 903–8519, E-mail: *karen.carlson@science.doe.gov;* for hard copies of background material mentioned in this solicitation.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on March 2, 2004.

Martin Rubinstein,

Acting Director, Grants and Contracts Division, Office of Science.

[FR Doc. 04–5124 Filed 3–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 31, 2004
1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, 10-A Cities of Gold Road, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m.—Call to Order by Ted Taylor, Deputy Designated Federal Officer (DDFO); Roll Call and Establishment of a Quorum; Welcome and Introductions by Katherine Guidry, Acting Chair; Approval of Agenda; Approval of January 26, 2004 Meeting Minutes
1:15 p.m—Public Comment
1:30 p.m.—Special Election of NNMCAB Chair
Special Election of NNMCAB Vice-Chair (if applicable)
2 p.m—Board Business
- Recruitment/Membership Update
- Report from Chair
- Report from DOE, Ted Taylor, DDFO
- Report from Executive Director, Menice S. Manzanares
- 2004 NNMCAB Retreat, Menice S. Manzanares
- New Business

2:30 p.m.—Break
2:45 p.m.—Report from Committees
- Executive Committee—Report on trip to Hanford CAB meeting, Tim Delong
- Discussion on Pros and Cons of Constituency Seats on the Board
- Environmental Monitoring, Surveillance and Remediation, Tim Delong
- Waste Management Committee, Jim Johnston
- Community Involvement Committee, Abad Sandoval

5 p.m.—Dinner Break
6 p.m.—Public Comment
6:15 p.m.—Presentation by Ms. Sandra Martin, Bureau Chief, New Mexico Environment Department (NMED) Hazardous and Radioactive Materials Bureau
- Overview of the NMED responsibilities, operations, and functions.
- Overview of the NMED Hazardous and Radioactive Materials Bureau

7:30 p.m.—Break
7:45 p.m.—Consideration and Action of Proposed Bylaws Amendment No. 5, as per Section XII, page 13 of the NNMCAB Bylaws
8 p.m.—Recap of Meeting
8:30 p.m.—Adjourn

This tentative agenda is subject to change in advance of the meeting. Please get a copy of the final agenda at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC on March 3, 2004.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. 04–5126 Filed 3–5–04; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Sunday, April 18, 2004, 8:30 a.m. to 6 p.m. and Monday, April 19, 2004, 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Bruce Strauss, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, SC–20/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone: 301–903–3705.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Sunday, April 18, 2004, and Monday, April 19, 2004:

- Discussion of Department of Energy High Energy Physics Programs;
- Discussion of National Science Foundation Elementary Particle Physics Program;
- Reports on and Discussions of Topics of General Interest in High Energy Physics;
- Public comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 3, 2004.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. 04–5123 Filed 3–5–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7632–6]

Performance Evaluation Reports for Fiscal Year 2003; Section 105 Grants; Iowa, Kansas, Missouri, Nebraska, and the Unified Government of Wyandotte County, Kansas City, Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.140) require the Agency to conduct yearly evaluations on the performance of grant recipients under approved state/EPA agreements. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluation. EPA performed FY–03 end-of-year evaluations of four state air pollution control programs (Iowa Department of Natural Resources; Kansas Department of Health and Environment; Missouri Department of Natural Resources; Nebraska Department of Environmental Quality); and one local air pollution control programs (Unified Government of Wyandotte County, Kansas City, Kansas). These evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act.

ADDRESSES: Copies of the evaluation reports are available for public inspection at EPA's Region 7 Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem, (913) 551–7659, or by e-mail at *vangoethem.evelyn@epa.gov.*

Dated: February 27, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–5127 Filed 3–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 22, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Anchor Bancorp, Inc., Voting Preferred Stock Trust No. 1, Wayzata, Minnesota, and Anchor Bancorp, Inc., Voting Preferred Stock Trust No. 2, Wayzata, Minnesota (Jacqueline D. Becklund, William J. Berens, Richard D. Bliss, Carl W. Jones, Christopher W. Jones, Richard A. McMahon, Helen J. Warren, and Wendy J. Zehngebot, as trustees of each trust); as a group acting in concert, to gain control of Anchor Bancorp, Inc., Wayzata, Minnesota, and thereby indirectly acquire voting shares of Anchor Bank Farmington, National Association, Farmington, Minnesota, Anchor Bank Heritage, N.A., North Saint Paul, Minnesota; Anchor Bank Saint Paul, Saint Paul, Minnesota; Anchor Bank National Association, Wayzata, Minnesota; and Anchor Bank, West Saint Paul, National Association, West Saint Paul, Minnesota.

Board of Governors of the Federal Reserve System, March 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–475 Filed 3–5–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 2004.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. CB Financial Corp., Rehoboth Beach, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of County Bank, Rehoboth Beach, Delaware.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia; to acquire 100 percent of the voting shares of Synovus Bank of Jacksonville, Jacksonville, Florida (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. The Templar Fund, Inc., St. Louis, Missouri; to acquire an additional 7.5 percent, for a total ownership of 42 percent, of Truman Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Truman Bank, St. Louis, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Summit Bancshares, Inc., Fort Worth, Texas; to acquire 100 percent of the voting shares of ANB Financial Corporation, Arlington, Texas, and thereby indirectly acquire voting shares of ANB Delaware Financial Corporation, Wilmington, Delaware, and Arlington National Bank, Arlington, Texas.

Board of Governors of the Federal Reserve System, March 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–476 Filed 3–5–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 22, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Columbia Bancorp, Columbia, Maryland; to acquire through its subsidiary, 20 percent of the voting shares of Delmarva Bank Data Processing Center, Inc., Easton, Maryland, and thereby engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Watford City Bancshares, Inc., Watford City, North Dakota, to engage *de novo* through its subsidiary, First International Community Development Fund, Inc., Watford City, North Dakota, in community development activities, pursuant to section 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, March 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–477 Filed 3–5 –04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (e.s.t.), March 15, 2004.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the February 17, 2004, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

Parts Closed to the Public

3. Personnel matters.
4. Procurement issues.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 3, 2004.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 04–5212 Filed 3–5–04; 4:16 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Healthy People 2010 Chapter 23: National Survey of Public Health Agencies—New —Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC). The proposed survey is designed to collect data to address objectives in Chapter 23, Public Health Infrastructure. The Centers for Disease Control and Prevention and the Health Resources and Services Administration are co-lead agencies for objectives in Chapter 23. The overall goal of objectives in Chapter 23 is to ensure that federal, state, tribal, and local health agencies have the infrastructure to provide essential public health services effectively. This one-time survey is expected to take place over two to three months. The annualized burden for this data collection is 1,356 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Health Department	56	1	60/60
Local Health Department	1,300	1	60/60

Dated: March 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5057 Filed 3–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Occupational Safety and Health Research, Safety and Occupational Health Study Section: Program Announcement Number 04038

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Occupational Safety and Health Research, Safety and Occupational Health Study Section: Program Announcement Number 04038.

Times and Dates: 1 p.m.–1:15 p.m., March 29, 2004 (Open). 1:15 p.m.–3 p.m., March 29, 2004 (Closed).

Place: Teleconference Number 304.285.5979.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04038.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, WV 26505, Telephone 304.285.5979.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 2, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5067 Filed 3–5–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families, Office of Community Services

Funding Opportunity Title: Special State Technical Assistance; Announcement Type: Competitive Grant-Initial

Funding Opportunity Number: HHS–2004–ACF–OCS–EZ–0005.

CFDA Number: 93.569.

Dates: Applications are due between April 7, 2004, and July 30, 2004, within the time frames specified in this announcement for mailed and/or hand-carried applications.

I. Funding Opportunity Description

The Office of Community Services (OCS) within the Administration for Children and Families (ACF) announces a Special State Technical Assistance discretionary funding program to support interventions in cases where an eligible entity is in a crisis situation.

Under the Community Services Block Grant, section 674(b)(2)(B) and 678A, funds may be used by the Secretary to assist States in carrying out corrective action activities and monitoring to correct programmatic deficiencies of eligible entities. States are required to determine whether eligible entities meet the performance goals, administrative standards, financial management obligations and other requirements of the State. The CSBG legislation mandates that States provide training and technical assistance (T&TA) prior to any termination procedures. It also

requires States to carry out corrective activities and to monitor all eligible entities at least every three years.

The CSBG Act requires States to conduct regular, on-site reviews of eligible entities. When a State determines that an eligible entity has a deficiency that must be corrected, the CSBG legislation mandates that the State offer an eligible entity training and technical assistance (T&TA), if appropriate, to help correct such a deficiency. A State may support this T&TA with the CSBG funds remaining after it has made grants to eligible entities. However, OCS recognizes that, in some instances, the problem to be addressed may be of such a complex or pervasive nature that it cannot be adequately addressed with the resources available to the State CSBG Administrator.

Definitions of Terms

The following definitions apply:

Community Action Agency (CAA)—refers to local-level organizations that are Community Services Block Grant (CSBG) Eligible Entities. They provide a number of types of assistance with the goals of reducing poverty and enabling low-income families to become economically self-sufficient.

Community Services Network—refers to the various organizations involved in planning and implementing programs funded through the CSBG or providing training, technical assistance or support to them. The network includes local CAAs and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations that collaborate and participate with CAAs and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement—an award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project. Substantial involvement may include collaboration or participation by OCS staff in activities specified in the award and, as appropriate, decision-making at specified milestones related to performance. The involvement may range from joint conduct of a project to OCS approval prior to the recipient's undertaking the next phase in a project.

Eligible Entities—(Section 673(1)(A))—the term "eligible entity" means an entity that is an eligible entity described in section 673(1) (as in effect on the day before the date of enactment of the COATES Human Services Reauthorization Act of 1998) as of the day before such date of enactment or is designated by the process described in section 676A (including an organization serving migrant or seasonal farmworkers that is so described or designated); and has a tripartite board or other mechanism described in the Act.

Special Note: Under the Act, CAAs are eligible entities, however not all eligible entities are CAAs. Throughout this announcement, the reference is to organizations defined in section 673(1)(A) of the CSBG Act whenever CAAs are mentioned.

Nationwide—refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the CAAs and other local service providers who administer CSBG funds.

Non-profit Organization—refers to an organization, including faith-based and community-based, which meets the requirement for proof of non-profit status in the "Additional Information on Eligibility" section of this announcement and has demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Outcome Measures—are indicators that focus on the direct results one wants to have on customers and on communities.

Performance Measurement—is a tool used to assess how a program is accomplishing its mission through the delivery of products, services and activities.

Results-Oriented Management and Accountability (ROMA) System—ROMA is a system which provides a framework for focusing on results for local agencies funded by the CSBG Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State—means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes Territories as defined below.

Technical assistance—is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories—refers to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Training—is an educational activity or event that is designed to impart knowledge, understanding or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Program Purpose, Scope and Focus

The purpose of this program priority area is to improve the capacity of States in carrying out corrective action activities and monitoring to correct programmatic deficiencies of eligible entities. The grant will support interventions in cases where an eligible entity is in a crisis situation. It will preclude the need for termination hearings and proceedings by stabilizing eligible entities in crises and correcting programmatic deficiencies, if possible.

Program Statutes

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their sub-tier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their sub-tier contractors and/or sub-grantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their sub-tier contractors or sub-grantee will pay with profits or non-appropriated funds on or after December 22, 1989, and (3) to file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. Required Certification and Disclosure forms to be submitted with your application are attached.

Public Law 103–227, Part C. Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor

facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through States and local government by Federal grant, contract, loan or loan guarantee. The law does not apply to facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirement of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any sub-awards, which contain provisions for children's services and that all sub-grantees shall certify accordingly.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $500,000.

Anticipated Number of Awards: 5–12.

Ceiling of Individual Awards: $50,000.

Floor on Amount of Individual Awards: $7,000.

Average Projected Award Amount: $50,000.

Project Periods for Awards: 17 months.

III. Eligibility Information

1. Eligible Applicants

Community Services Block Grant eligible entities. Statewide or local organizations or associations including faith-based organizations, for-profit organizations, non-profit organizations having 501 (C) 3 status, and non-profit organizations that do not have 501 (C) 3 status.

Additional Information on Eligibility

As prescribed by the Community Services Block Grant Act (Pub. L. 105–285, section 678(c)(2), eligible applicants are eligible entities (*see* definitions), organizations, or associations with demonstrated expertise in providing training to individuals and organizations on methods of effectively addressing the needs of low income families and communities.

Applicants must demonstrate proof of non-profit status and this proof must be included in their applications (*see* section IV. 2). Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $50,000. An application that exceeds the upper value of the dollar range specified will be considered "non-responsive" and will be returned to the applicant without further review.

2. Cost Sharing or Matching

None.

3. Other (if Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applications are cautioned that the ceiling for individual awards is $50,000. Applications exceeding the $50,000 threshold will be returned without review.

IV. Application and Submission Information

1. Address To Request Application Package

Office of Community Services Operations Center, ATTN: Marianna RayNor-Hill, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209; telephone: (800) 281–9519; e-mail: *www.Grants.gov.*

2. Content and Form of Application Submission

An original and two copies of the complete application are required. The original and 2 copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget.

Applicants must demonstrate proof of non-profit status and this proof must be included in their applications. Please include any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via

the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grant.gov:

- Electronic submission is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number to register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurance and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grant.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*. You must search for the downloadable application package by the CFDA number.

Application Content

Each application must include the following components:

(a) *Table of Contents.*

(b) *Abstract of the Proposed Project*—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

(c) *Completed Standard Form 424*—that has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(d) *Standard Form 424A*—Budget Information-Non-Construction Programs.

(e) *Narrative Budget Justification*—for each object class category required under section B, Standard Form 424A.

(f) *Project Narrative*—A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.

Application Format

Each application should include one signed original application and two additional copies of the same application.

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives, and Business Plan must not exceed 65 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Additional requirements: (a) The application must contain a signed Standard Form 424 Application for Federal Assistance "SF–424", a Standard Form 424–A Budget Information "SF–424A" and signed Standard Form 424B Assurance—Non-Construction Programs "SF–424B" completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets requirements set forth in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the "Funding Opportunity Description" section of this announcement.

Private, non-profit organizations are encouraged to submit with their applications the survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants." The forms are located on the Web at *www.acf.hhs.gov/programs/ofs/forms.htm.*

Project summary abstract: Provide a one page (or less) summary of the project description with reference to the funding request.

Full project description requirements: Describe the project clearly in 30 pages or less (not counting supplemental documentation, letters of support or agreements) using the following outline and guidelines. Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions. The pages of the project description must be numbered and are limited to 30 typed pages starting on page 1 of "Objectives and Need of Assistance". The description must be doubled-spaced, printed on only one side, with at least ½ inch margins. Pages over the limit will be removed from the competition and will not be reviewed.

It is in the applicant's best interest to ensure that the project description is easy to read, logically developed in

accordance with the evaluation criteria and adheres to page limitations. In addition, applicants should be mindful of the importance of preparing and submitting applications using language, terms, concepts and descriptions that are generally known by both the targeted youth and the broader youth services field. The maximum number of pages for supplemental documentation is 10 pages. The supplemental documentation, subject to the 10-page limit, must be numbered and might include brief resumes, position descriptions, proof of non-profit status (if applicable), news clippings, press releases, *etc.* Supplemental documentation over the 10-page limit will not be reviewed.

Applicants must include letters of support or agreement, if appropriate or applicable, in reference to the project description. Letters of support are not counted as part of the 30-page project description limit or the 10-page supplemental documentation limit. All applications must comply with the following requirements except as noted:

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

3. Submission Dates and Times

The closing time and date for receipt of applications is any time before 4:30 p.m. (eastern time zone) between April 7, 2004 and July 30, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the "Department of Health and Human Services (HHS) Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, Attention: Daphne Weeden." Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., e.s.t., at the Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209; Attention: Barbara Ziegler Johnson.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail services. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required forms:

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Abstract of Proposed Project.	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Completed Standard Form 424.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Completed Standard Form 424A.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Narrative Budget Justification.	As described above	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the "Application Review Information" and the "Review and Selection Criteria" sections of this announcement.	Consistent with guidance in "Application Format" section of this announcement.	By application due date.
Certification regarding lobbying.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

Additional Forms: Private-non-profit organizations may submit with their applications the additional survey located under "Grant Related Documents and Forms" titled "Survey for Private, Non-Profit Grant Applicants".

What to submit	Required content	Required form or format	When to submit
Survey for Private, Non-Profit Grant Applicants.	Per required form	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following States and Territories have elected to participate under the Executive Order process and have established a Single Point of Contact (SPOC): Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, Puerto Rico, the Commonwealth of Northern Mariana Islands, and the United States Virgin Islands.

Applicants for projects to be administered by federally-recognized Indian tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as a part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

Applicants are cautioned that the ceiling for individual awards is $50,000. Applications exceeding the $50,000 threshold will be returned without review.

6. Other Submission Requirements

Submission by Mail: An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 5 p.m. eastern standard time on or before the closing date. Applications should be mailed to: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, ATTN: Daphne Weeden.

For Hand Delivery: Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 4:30 p.m. eastern standard time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: Department of Health and Human Services (HHS) Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209 Attention: Barbara Ziegler Johnson. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

V. Application Review Information

1. Criteria

Instructions: ACF Uniform Project Description (UPD)

The following are instructions and guidelines on how to prepare the "project summary/abstract" and "Full Project Description" sections of the application. The generic UPD requirement is followed by the evaluation criterion specific to the Community Services Block Grant legislation.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the

endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. Explain how the project will reach the targeted population and how it will benefit participants or the community.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example, such terms as the "number of people served." When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF."

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports, documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information.

A non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criterion I: Work Program (Maximum: 30 points).

Factors: The work program is results-oriented and appropriately related to the legislative mandate. The extent to which the applicant addresses: Specific outcomes to be achieved; performance targets which the project is committed to achieving; critical milestones, which must be achieved if results are to be gained; and organizational support; the level of support including priority this project has for the agency.

Evaluation Criterion II: Need for Assistance (Maximum: 20 points).

Factors: The applicant documents that the project addresses vital needs related to the purposes stated and discussed under this announcement.

The applicant provides statistics and other data and information in support of its contention.

Evaluation Criterion III: Ability of Applicant to Perform (Maximum: 20 points).

Factors: The applicant fully describes, for example in a resume, the experience and skills of the proposed sources of technical assistance showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project.

Evaluation Criterion IV: Significant and Beneficial Impact (Maximum 15 points).

Factor: The extent to which the applicant adequately describes how the project will assure long-term program and management improvements that will aid in removal from the "at risk category".

Evaluation Criterion V: Evidence of Significant Collaborations (Maximum 10 Points).

Factors: The extent to which the applicant describes how it will involve the local Board of Directors of eligible entities as well as other partners in the community in its activities.

Where appropriate, the extent to which the applicant describes how it will interface with other related organizations.

Criterion VI: Adequacy of Budget (Maximum: 5 points)

Factors: a. The extent to which the resources requested are reasonable and adequate to accomplish the project. (0–3 points)

b. The extent to which total costs are reasonable and consistent with anticipated results. (0–2 points)

2. Review and Selection Process

OCS Evaluation of Applications

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications, which meet the initial screening requirements, will be reviewed solely on responsiveness to program guidelines and evaluation criteria published in this announcement. States will not be competing with each other for funding under this program.

VI. Award Administration Information

1. Award Notices

Following approval of the applications selected for funding, notice of project approval and authority to

draw down projects will be made in writing. The official award document is the Financial Assistance Award, which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer.

2. Administrative and National Policy Requirements

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements or regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB (Approval Number 0980–0204).

The project description is approved under OMB control number 0970–0139 which expires 3/31/2004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

3. Reporting

All grantees are required to submit quarterly program reports. Grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf*. A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact: Marianna RayNor-Hill, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209. e-mail: *lmatos@acf.hhs.gov;* telephone: (202) 401–9343.

Grants Management Office Contact: Daphne Weeden, Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209. e-mail: *dweeden@acf.hhs.gov;* telephone: (202) 401–4577.

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: February 24, 2004.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 04–5044 Filed 3–5–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[ACYF/FYSB 0002–2004]

Notice of Technical Assistance Meetings for the Mentoring Children of Prisoners Program Announcement

AGENCY: Administration on Children, Youth, and Families, ACF, DHHS.

ACTION: Notice of meeting.

SUMMARY: This notice is to inform interested parties of the availability of technical assistance meetings for the Mentoring Children of Prisoners Program Announcement that was published in the **Federal Register** on February 23, 2004.

FOR FURTHER INFORMATION CONTACT: Susan Spangnuolo, Mid Atlantic Network of Youth and Family Services (MANY); 135 Cumberland Rd. Suite 201; Pittsburgh, PA 15237; 412–366–6562; 412–366–5407 fax; *susan@manynet.org.*

SUPPLEMENTARY INFORMATION: The Mentoring Children of Prisoners grant program is administered through the Family and Youth Services Bureau (FYSB). Through the Mentoring Children of Prisoners Program, FYSB awards grants to community- and faith-based organizations that provide children and youth of incarcerated parents with mentors. Each mentoring program is designed to ensure that mentors provide young people with safe and trusting relationships; healthy messages about life and social behavior; appropriate guidance from a positive adult role model; and opportunities for increased participation in education, civic service, and community activities.

FYSB is currently soliciting for applications to carry out the mentoring activities described in the program announcement that was published in the **Federal Register** on February 23, 2004. Applications for the Mentoring Children of Prisoners program are due April 23, 2004.

MANY will provide technical assistance to interested parties about the Mentoring Children of Prisoners Program and grant opportunity through workshops. You must register for the workshops in advance through the contact listed above. If you require special accommodations to attend or participate in this meeting, please provide information regarding your requirements at the time of registration.

Workshop meeting places and times:

March 8, 2004—9:30 a.m.–4 p.m.	Westin Crown Center, 1 Pershing Road, Kansas City, MO 64108, Meeting Room: Pershing Place West.	Kansas City, MO.
March 9, 2004—9:30 a.m.–4 p.m.	Hilton Jacksonville, 1201 Riverplace Blvd., Jacksonville, Florida 32207, Meeting Room: St. Johns.	Jacksonville, FL.
March 9, 2004—9:30 a.m.–4 p.m.	Radisson Hotel Toledo, 101 North Summit Street, Toledo, Ohio 43604, Meeting Room: Ballroom 1.	Toledo, OH.
March 10, 2004—9:30 a.m.–4 p.m.	Positively Oak Cliff, 3107 West Camp Wisdom Road, Suite 980, Dallas, TX 75237.	Dallas, TX.
March 10, 2004—9:30 a.m.–4 p.m.	NJ Department of Corrections, Central Office, Stuyvesant Ave. & Whittlesey Road, Trenton, New Jersey 08625.	Trenton, NJ.

Interested parties should contact Susan Spanguolo; MANY; 135 Cumberland Road; Suite 201 Pittsburgh, PA 15237; 412–366–6562; 412–366–5407 fax; *susan@manynet.org* to register for the meeting.

Dated: March 2, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–5132 Filed 3–5–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans (ANA); Adoption of ANA Program Policies and Procedures

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: The Administration for Native Americans (ANA) herein issues final interpretive rules, general statements of policy and rules of agency procedure or practice relating to the Social and Economic Development Strategies (*SEDS*) Language Preservation and Maintenance (hereinafter referred to as Native Language), and Environmental Regulatory Enhancement (hereinafter referred to as Environmental) programs.

EFFECTIVE DATE: December 21, 2003.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, Director of Program Operations at (877) 922–9262.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Section 814 of the Native American Programs Act of 1974, as amended, 42 U.S.C. 2991b–1, under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy, and rules of agency procedure or practice and to give notice of the final adoption of such changes at least 30 days before the changes become effective.

ANA published a Notice of Public Comment (NOPC) in the **Federal Register** (68 FR 64685) on November 14, 2003 on the proposed ANA policy and program clarifications, modifications, and activities for FY 2004. The NOPC closed December 14, 2003. ANA received comments from three different entities: (A) one comment was submitted from an Alaska Village Council; (B) three comments were received from a national Native American non-profit organization, and (C) several editorial comments were received from an individual. ANA has considered all the public comments received and has included clarifications and modifications reflecting several of the comments in the SY 2004 SEDS, Native Language and Environmental Program Announcements.

Final Policies and Procedures and Comments and Responses

1. Policy on Deadline Date for Applications

For FY 2004, ANA will have one closing date for the SEDS Program or other special initiative undertaken pursuant to Section 803(a) of the Native American Programs Act of 1974, 42 U.S.C. 2991b, and one closing date each for the Alaska SEDS Program, Native Language program, and the Environmental program. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1972, as amended, 42 U.S.C. 2991b and 2991b–3)*

2. Receipt of Applications

ANA's program announcements will now require that all applications for funding be "received by" ANA by the closing date. Consistent with past practices, ANA will not acknowledge receipt of applications. Previously, ANA accepted applications for funding if they were postmarked on or before the closing date. The change to receipt of the application by the closing date is expected to reduce disputes regarding postmarks and late-arriving applications. This change will also ensure ANA has the appropriate number of skilled peer panel reviewers available to review submitted applications. Applications received after the published closing date as stipulated in this published announcement will not be considered. The new program announcement closing schedules will allow ANA to release all funding to communities earlier in the fiscal year; provide applicants additional time to receive agency comments and seek free technical assistance before the next competition in the program. Additionally, ANA grantees will have the opportunity to implement projects in a timely manner, recruit personnel to support the grantee's objectives; and decrease the number of requests for no cost grant extensions. This modification will afford ANA the opportunity to perform grant administration and program monitoring and evaluation activities that support new and non-competing continuation grants. *(Legal authority: Sections 833(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Discussion of Comment: The one comment received on this section expressed concern with the change associated with the receipt of applications from "postmarked by" to "received by." The commenter expressed concern that unreliable mail service delivery from remote areas will cause undue stress on organizations.

Response: During the previous competitive cycle, ANA performed an assessment of all phases and benchmarks of the pre-award process to determine areas of needed efficiency. The determination to change from "postmarked by" to "received by" was given much consideration, especially considering some ANA applicants are located in isolated communities. This policy will be an adjustment for all applicants, however the outcomes of improved reader selection, the elimination of disputes associated with postmarks and late-arriving applications, and other pre-award activities are more beneficial to applicants than the re-instatement of the "post-marked by" policy. ANA intends to have the program announcements

published with sufficient time allowed for applicants to prepare and submit an application in a timely manner. Therefore, the requirement for applications receipt will remain intact.

3. Access to Program Announcement and Application Materials

The program announcement and the application materials are available on the ANA Web site at: *http://www.acf.hhs.gov/programs/ana*. The material on the Web site is provided as information only. ANA makes all reasonable efforts to assure that the Web site is complete and accurate. The applicant bears sole responsibility, to assure that the copy downloaded and/or printed from any source is accurate and complete. In case of a conflict between the content of material downloaded from the website and the material appearing the **Federal Register**, the notice published in the **Federal Register** shall take precedence. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

4. Application Submission Requirements

The format of the application for funding is now standardized. The new application format will help applicants focus on the type of information and data required to support an application for funding. ANA will implement a page limitation requirement to enable a thorough review of the application. (See 4(a) and (b)). ANA will implement these page requirements with a limit on the number of pages for each section. These modifications to the announcement will reduce the amount of documentation applicants need to submit and it will both strengthen and streamline the peer panel review process to allow reviewers to focus on the project and applications content. Additionally, program announcement standardization will prepare ANA and applicants for the Federal Government's Electronic Grant Application submission initiative and process. *(Legal authority:* Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)

4. (a) Organization and Preparation of Application: Due to the intensity and pace of the application review and evaluation process, ANA has standardized the application submission format. The new application submission format for the SEDS program is included in this notice.

4. (b) ANA Application Format: ANA will now require all applications to be labeled with a Section Heading in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding in the programs covered by this notice. All pages submitted (including Government Forms, certifications and assurances) should be numbered consecutively. The paper size shall be 8 ½ x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. The font size should be no smaller than 12-point and the font type shall be Times New Roman. These requirements do not apply to the project Abstract Form, Letters of Commitment, the Table of Contents, and the Objective Work Plan. A complete application for assistance under ANA's Program Announcements consists of Three Parts. Part One is the SF 424, Required Government Forms, and other required documentation noted in the program announcement. Part Two of the application is a description of the project's substance. This section of the application may not exceed 45 pages. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b-3.)*

4. (c) Explanation of Project Period: Under ANA's new program announcements, project periods will be 12 months, 17 months, 24 months, or 36 months. ANA currently funds projects spanning a 36-month period. Exception: Native Language Planning Grants (Category I) will continue to be 12 or 17 month project periods. This notice clarifies the specific project periods that ANA will fund. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2291b and 2991b–3)*

4. (d) Application Review Criteria: ANA has expanded the review criteria to allow for a more equitable distribution of points during the application review and competition process. In the FY 2004 Program Announcement, ANA will improve the competitive review process through the use of six criteria that will evenly distribute evaluation points. The use of six criteria will standardize the review of each application and distribute the number of points more equitably. Based on the Administration for Children and Families (ACF) Uniform Project Description, ANA's criteria categories are: Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Narrative. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2291b and 2991b–3)*

5. Program Areas of Interest

ACF supports and fosters strong families and healthy communities. In the FY 2004 Program Announcements, ANA has identified Program Areas of Interest to complement other Health and Human Services and ACF programs. For example, in ANA's SEDS program the Economic Development Areas of Interest support activities that will provide business and employment opportunities and options necessary to build the foundation of healthy communities and strong families. Under Social Development, the program areas of interest support families, elders, youth development, healthy marriage, and individuals with disabiliites. Furthermore, under Governance, funding may be used for leadership and management training or to assist eligible applicants in the development of laws, regulations, codes, policies, and practices that support and promote community-based activities that lead to self-sufficiency. The program Areas of Interest are projects that ANA considers supportive to Native American communities. Although eligibility for funding is not restricted to projects of the type listed under this program announcement, these Areas of Interest are ones which ANA sees as particularly beneficial to the develpment of healthy Native American communities. *(Legal authority: Sections 803(a) of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b)*

6. Policy on Results and Benefits

ANA's program announcement will not offer an opportunity for applicants to choose from six project performance indicators. For example, indicators may be: The number of jobs created or retained; the strengthening and modification of tribal government activities such as the implementation of codes and ordinances; the number of people trained; the dollar amount of non-federal resources leveraged per grantee; the number and type of community, federal and state partnerships involved in the project; the dollar amount of private sector investsment integrated into the project; and the number of community-based

small businesses established. This quantitative and qualitative date will be used to monitor grantee performance and to communicate to the public and Congress on the impact and success of locally funded ANA projects. (*Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 US.C. 2991b and 2991b–3*)

Correction: Within the ANA Results and Benefits Criteria, a redundant performance indicator was deleted. The indicator removed was "number of families served". The agency considered that this information was being addressed in a more comprehensive indicator: "the number of children, youth, families or elders assisted or participating".

7. ANA Funding Restrictions

ANA does not fund:

• Activities in support of litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122. *(Legal authority: Sections 803(a) and (d), and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, and 2991b–3, 45 CFR 1336.50(a); 45 CFR 74.27 and 92.22; OMB Circular A–122, Attachment B, Paragraph 10(g) and OMB Circular A–87, Attachment B, Paragraph 14(b))*

• Duplicative projects or does not allow any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDs, Language, or Environmental project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR 1336, Subpart C, but before funding decisions are complete. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Discussion of Comment: The writer expressed concern with the policy statement on award determination. If ANA is going to consider whether the proposed project is essentially identical or similar, in whole or in part, to projects in the same community previously funded under the same competition, they would be competing with their consortia membership for ANA funding.

Response: The policy statement read in its entirety references a policy that ANA does not fund duplicative projects within the same identified community that are currently being funded or were previously funded by ANA. The intent of the policy is to not restrict consortia services to its membership and is not intended to create problematic competition within communities. It is ANA's consideration that this policy supports an internal control measure to ensure the effective use of limited federal funds by the elimination of financial awards for services and/or activities already supported by ANA. The funding restriction policy will remain intact.

Discussion of Comment: The writer also wanted a definition of "projects that would require funding on an indefinite or recurring basis".

Response: ANA provides financial assistance for projects that are either complete or self-sustaining or funded by other than ANA funds at the end of the project period. Proposed projects that cannot demonstrate completion, or be self-sustaining or funded by other than ANA funds at the end of the proposed project period will not be considered for funding.

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other Tribes or Native American organizations that are otherwise eligible to apply. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(2))*

Discussion of Comment: The writer expressed concerns with the statement "projects in which a grantee would provide training and/or technical assistance to other tribes or Native American organizations that are otherwise eligible to apply".

Response: The policy statement read in its entirety allows for consortia to provide technical assistance in support of project objectives to its membership. The policy will remain intact.

• The purchase of real property or construction because those activities are not authorized by the Native American Programs Act of 1974, as amended. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(7))*

• Objectives or activities to support core administration activities of an organization. However, functions and activities that are clearly project related are eligible for grant funding. Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3 and 45 CFR 1336.33(b)(4))*

• Costs associated with fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50; 45 CFR 74.27; OMB Circular A–122, Attachment B, Paragraph 23; OMB Circular A–87, Attachment B, Paragraph 21.)*

• Major renovation or alternation because those activities are not authorized under the Native American Programs Act of 1974, as amended. (*Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3*)

• Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or village. (*Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3*)

• Project activities that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(5))*

Correction: The agency noted that the wording of the funding restriction "Project activities that do not further the three interrelated ANA goals of economic development, social development, governance or meet the purpose of this program announcement" should have read as "Project activities that do not further the three interrelated ANA goals of economic development or

social development or governance, or meet the purpose of this program announcement". The technical correction allows the applicant to indicate on the ANA abstract form which one of the three inter-related ANA goals is primarily being addressed.

8. Administrative Policies

Applicants must comply with the following Administrative Policies:

- An applicant must provide a 20% non-federal match of the approved project costs. Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Pub. L. 95–134, as amended (48 U.S.C. 1469a), under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50(b))*
- An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit organization shall submit one of the following verifiable documents: (i) A copy of the applicant's listing in the Internal Revenue Service's(IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or (ii) a copy of the currently valid IRS tax exemption certificate, or (iii) a copy of the articles of incorporation bearing the seal of the State or federally-recognized Tribe in which the corporation or association is domiciled. Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determination of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for the purpose of ANA eligibility. *(Legal Authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance, an applicant should provide supporting documentation and assurance that its duly elected or appointed board of directors is majority Native American. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(a))*
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Proposed projects must consider the maximum use of all available community-based resources. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Discussion of Comment: The writer expressed concern with the statement "Proposed projects must consider the maximum use of all available community-based resources." It is interpreted by the writer that this policy will create a hardship for Native communities with limited community resources.

Response: This statement is intended to ensure that the applicant assesses the availability of other community resources and any opportunities and options to partner with other community-based programs. Applicants with scarce community resources will not be penalized. The policy statement will remain intact.

- Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- Applicants proposing an Economic Development project should address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow, and approach for the implementation and marketing of the business. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*
- ANA will not accept applications from tribal components, which are tribally authorized divisions of a larger Tribe, which are not approved by the governing body of the Tribe. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(a))*

9. DUNS Numbers

(New Requirement to receive grant awards)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants, after giving notice in the **Federal Register** on June 27, 2002 and providing opportunity for public comment. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.Gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under mandatory grant programs, submitted on or after October 1, 2003. A DUNS number may be acquired at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

10. Community and Faith-Based Organizations

The Administration for Children and Families through the Administration for Native Americans supports and fosters strong families and healthy communities under four initiatives. ANA encourages applications from eligible community and faith-based organizations that (1) provide services directly to Native American people; (2) organizations that support rural communities; (3) provide prevention and intervention programs for youth and families; and (4) promote healthy relationships to strengthen families.

11. Community-Based Projects

ANA's program announcements will emphasize partnerships and community-based projects. The intent of this change is to increase the number of grants to local community organizations, to encourage new partnerships with public and private community-based organizations. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

12. Funding Thresholds

The ANA will increase funding ceilings under the Native Language program for Category I Planning and Category II Design and Implementation grants. The minimum grant amount for Native Language grants will be $25,000. The ceiling amount for Category I grants will increase from $60,000 to $100,000. The ceiling amount for Category II grants will increase from $150,000 to $175,000. The increase in funding amounts for Native Language grants will support the effective assessment of native languages. It will also provide applicants the opportunity to incorporate new technologies necessary to design, implement, and preserve Native language and culture. Grants awarded under the Native Language program that produce audio or print media will now include a stipulation that a copy of the product be provided to ANA for the Language Repository. Federally-recognized Tribes have the option to not submit project products. The funding ceiling for Social and Economic Development Strategies (SEDS) will be reduced from $1 million to $500,000. The minimum grant award amount will be $25,000. This adjustment of the minimum and maximum funding levels is due to the demand for SEDS project funding. These changes will result in additional community-based social and economic development project grant awards under the SEDS program. The Environmental Program announcement includes a suggested threshold and ceiling on proposed projects. For FY 2004 these amounts will be considered as guidelines only. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

13. Availability of Multi-Year Funding

Applicants may apply for projects of up to 36 months in duration. A multi-year project, one extending more than 12 months or 17 months, affords grantees the opportunity to undertake more complex and in-depth projects. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 or 17 months to complete. It is not a series of unrelated projects presented in chronological order over a three-year period. Funding after the first budget period of a multi-year project will be non-competitive. However, multi-year funding will be contingent upon: (1) The availability of Federal funds; (2) the grantee's progress to achieve the objectives and activities outlined in the Objective Work Plan; (3) ANA's continued belief that the project is in the public interest; and (4) the grantee is in compliance with applicable statutory and grant reporting requirements. Multi-year grant awards are subject to the availability of funds and a determination by ANA that the grantee has successfully completed its prior year objectives. Exception: Native Language Category I: Planning Grants will remain 12 or 17 month projects. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

14. Applications From Multiple Organizations in the Same Geographic Area

ANA will accept applications for funding and award grants to multiple organizations located in the same geographic area, provided the activities are not duplicative of previously funded ANA projects in the same geographic area or to the same grantee. Previously, under each competitive program area, ANA accepted one application that served or impacted a reservation, Tribe or Native American community. The reason for this change is to expand and support large Native American rural and urban communities that provide a variety of services in the same geographic area. Although Tribes are limited to three simultaneous ANA grants (one each under SEDS, Native Language and Environmental programs) at any one time, this clarification allows other community-based organizations to apply for ANA funding to support on-going community-based efforts, provided the activities do not duplicate currently funded projects serving the same geographic area. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

15. Program Specific Program Announcements

ANA's FY 2004 program announcements will now be program specific. ANA will release separate program announcements for funding opportunities under SEDS, for Language Preservation and Maintenance, Environmental Regulatory Enhancement, and for special initiatives. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

16. Policy on Training and Technical Assistance

To reduce geographic disparities, ANA's training and technical assistance curriculum and all associated handouts will be standardized. ANA's contracted training and technical assistance providers may provide training in pre-application and project development. Training will be advertised in advance, to ensure prospective applicants have the opportunity to attend. All potential ANA applicants are eligible to receive free training and technical assistance in the SEDS, Language or Environmental program areas. *(Legal authority: Sections 804 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991c)*

17. Application Review Criteria

ANA has improved the competitive review process and will now use six criteria that will evenly distribute evaluation points. The use of six criteria will standardize the review of each application and distribute the number of points more equitably. ANA's criteria categories are: Project Introduction; Objectives and Need for Assistance; Project Approach; Organizational Capacity; Results and Benefits Expected; and Budget and Budget Justification. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Discussion of Comment: The comments submitted by the individual suggested ANA modify its sentence structure, and increase the point weight on the budget section to emphasize its importance.

Response: ANA has determined that the editorial and suggested re-wording did not change the intent of the information being requested and therefore incorporated a majority of the recommended edits in the ANA evaluation criteria section of the program announcement. The ACF Uniform Project Description requires the use of specific text in program announcements and the ANA program announcement adheres to those requirements. The edits provided more clarity and cohesiveness to this section of the program announcement without changing content or intent.

Response: The comment to increase the point value of the ANA Budget criteria would result in a subsequent decrease in assigned point value in another criterion. ANA determined that it would not be beneficial to the overall project presentation as outlined to increase the point value for the budget section. The assignment of point values

to evaluation criteria provides the applicant with an indication as to which criteria have more merit in the overall development of an application. ANA has determined the budget criteria point value is suitable in relation to the other merit criteria and will remain as initially established.

Technical Correction: The ANA evaluation criteria title "Introduction and Project Summary/Abstract" was re-written to state "Introduction and Project Summary/Project Abstract". This change was added to provide clarity and indicate to the applicant that the information requested should be indicated on the ANA Project Abstract form (OMB No. 0980–0204).

18. Definitions

The following definitions will be used in all ANA program announcements. In the FY 2004 Program Announcement, ANA clarifies many areas that have previously prompted numerous questions and application mistakes from applicants. The ANA program announcement will now include definitions for the following terms:

Authorized Representative: The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Budget Period: The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Community: A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information should be provided. (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Community Involvement: How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meetings minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community. The applicant should document the community's support of the proposed project. Applications from National and Regional Indian and Native organizations should clearly demonstrate a need for the project, explain how the project originated, identify the beneficiaries, and describe and relate the actual project benefits to the community and organization. National Indian and Native organizations should also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Completed Project: A completed project means that the program funded by ANA is finished, self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Consortia—Tribal/Village: A group of Tribes or villages that join together either for long-term purposes or for the purpose of an ANA project. Applicant must identify Consortia membership. The Consortia applicant must be the recipient of the funds. A Consortia applicant must be an "eligible entity" as defined by this program announcement and the ANA regulations. Consortia applicants should include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortia members supporting the ANA application. An application from a consortium should have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of tribes which duplicates activities for which member Tribes also receive funding from ANA. The consortium application should identify the role and responsibility of each participating consortia member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Construction: The initial building of a facility. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Core Administration: Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes that are unrelated to the actual management or implementation of the ANA project. However, salaries and activities that are clearly related to the ANA project are eligible for grant funding. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.33(b)(4).)*

Economic Development: Involves the promotion of the physical, commercial, technological, industrial, and/or agricultural capacities necessary for a sustainable local community. Economic development includes activities and actions that develop sustainable, stable, and diversified private sector local economies. For example, initiatives that support employment options, business opportunities, development and formation of a community's economic infrastructure, laws and policies that result in the creation of businesses and employment options and opportunities that provide for the foundation of healthy communities and strong families. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Equipment: Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3; 45 CFR 1336.50(a); 45 CFR 74.2 and 92.3)*

Governance: Involves assistance to tribal and Alaska Native village government leaders to increase their ability to execute local control and

decision-making over their resources. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Implementation Plan: The guidebook the applicant will use in meeting the results and benefits expected for the project. The Implementation Plan provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed by the Objective Work Plan. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

In-kind Contributions: In-kind contributions are property or services which benefit a federally assisted project or program and which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR Parts 74 and Part 92. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Letter of Commitment: A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. For example, a notice of award from another Federal agency committing $200,000 in construction funding to complement a proposed ANA funded pre-construction activity is evidence of a commitment. Statements about resources which have been committed to support a proposed project made in the application without supporting documentation will be disregarded. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Leveraged Resources: The total dollar value of all non-ANA resources that are committed to a proposed ANA project and are supported by documentation that exceed the 20% non-federal match required for an ANA grant. Such resources may include any natural, financial, and physical resources available within the tribe, organization, or community to assist in the successful completions of the project. An example would be a written letter of commitment from an organization that agrees to provide a supportive action, product, and service, human or financial contribution that will add to the potential success of the project. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Multi-purpose Organization: A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as day care, education, and training. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Multi-year Project: Encompasses a single theme and requires more than 12 or 17 months to complete. A multi-year project affords the applicant or opportunity to develop and address more complex and in-depth strategies that cannot be completed in one year. A multi-year project is a series of related objectives with activities presented in chronological order over a two or three-year period. Prior to funding the second or third year, of a multi-year grant, ANA will require verification and support documentation for the grantee that objectives and outcomes proposed in the preceding year were accomplished. Applicants proposing multi-year projects must complete and submit an Objective Work Plan (OWP) and budget with narrative for each project year, and fully described objectives to be accomplished, outcomes to be achieved, and the results and benefits to determine the successful outcomes of each budget period. ANA will review the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Objective(s): Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable, outcomes that would benefit the community and directly contribute to the achievement of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. *(Legal authority: Section 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Partnerships: Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, Tribes, federal and state agencies and private or non-profit organizations. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Performance Indicators: Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be measurable to determine that the project has achieved its desired objective and can be independently verified through monitoring and evaluation. *Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Real Property: Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Renovation or Alteration: The work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Resolution: Applicants are required to include a current signed Resolution (a formal decision voted on by the official

governing body) in support of the project for the entire project period. The Resolution should indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-federal matching funds (if applicable). *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Sustainable Project: A sustainable project is an on-going program or service that can be maintained without additional ANA funds. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Self-Sufficiency: The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self-sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well-being, and culture of the people that reside and work in the community. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Social Development: Investment in human and social capital for advancing the well-being of members of the Native American community served. Social development is the action taken to support the health, education, culture, and employment options that expand an individual's capabilities and opportunities, and that promote social inclusion and combat social ills. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

19. Competitive Panel Review Process

ANA will consolidate the peer panel review process. ANA is required by statute to provide a peer panel review for each eligible application. Panel reviewers are selected nationally for their education, experience, and working knowledge in ANA program areas. In FY 2003, ANA began the process of expanding and rotating the pool of panel reviewers. This process will ensure that applications for funding are reviewed, analyzed, and scored by qualified professionals in the respective program area. This organizational efficiency will ensure that each application receives appropriate consideration and that the panel review teams have the appropriate and necessary credentials to analyze, evaluate, and score applications. For example, readers with education and work experience in Environmental Regulatory Enhancement will be selected to review environmental applications. Readers with education and work experience in Language Preservation and Maintenance will be selected to review language applications. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

19. (a) Initial Screening

Each application submitted under an ANA program announcement will undergo a pre-review screening to determine if (a) The application was received by the program announcement closing date; (b) the application was submitted in accordance with Application Submission Requirements; (c) the applicant is eligible for funding; (d) the applicant has submitted the proper support documentation such as proof of non-profit status, resolutions, and required government forms; and (e) an authorized representative has signed the application. An application that does not meet one of the above elements will be excluded from the competitive review process. Ineligible applicants will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made funding decisions, unsuccessful applicants will be notified in writing within 90 days. Applicants are not ranked based on general financial need. Applicants, who are initially excluded from competition because of ineligibility, may appeal the Agency's decision. Likewise, applicants may also appeal an ANA decision that an applicants' proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C). ANA has a policy of not funding duplicative projects or allowing any one community to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the Agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The Agency will also consider whether the grantee is already receiving funding for a SEDS project or for another project from ANA. The Agency will also take into account in making funding decisions whether a proposed project would require funding on an indefinite or recurring basis. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

Correction: Added an additional pre-screening element (f) applicants must submit a DUNS number on their SF 424 form. This element was added per the Office of Management and Budget policy published in the **Federal Register** on October 1, 2003. This section was further edited to read as follows: "An application that does not meet one of the above elements will be considered incomplete and excluded from the competitive review process. Applicants, with incomplete applications, will be notified by mail within 30 business days from the closing date of this program announcement." This amendment was inserted to clarify and make a distinction between incomplete applications, which do not have recourse to appeal, and the determination of ineligibility, which has recourse to an appeal process.

19. (b) Automation of the Panel Review Process

In FY 2004, ANA will automate its application receipt and panel review process to comply with the Paperwork Reduction Act of 1995 and to support the ACF Electronic Grant Application Submission Initiative. The automation of document management will provide program operation efficiency. For example, when an application is submitted to ANA it is logged into an automated system and given an identification number. After the program announcement closing date, ANA randomly assigns each application to a peer review panel for evaluation and scoring. During the review process, panel reviewer comments are downloaded into data files. These comments are then matched and stored with the application data file. This process consolidates all applications and review information, protects the confidentiality of the panel reviewers, and allows applicants to obtain comments in a timely manner. *(Legal authority: Sections 803(a) and (d), 803C*

and 806 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–3 and 2991d–1)

19. (c) Panel Reviews and Funding Decisions

ANA values the knowledge and expertise of individual reviewers. Applications for funding are randomly assigned to panel review teams. Each panel reviewer is responsible for reading the program announcement **Federal Register** and scoring each application in accordance with the published review criteria. Each application is reviewed and scored independently by a panel reviewer. After the panel review process, ANA conducts due diligence on each application in the funding range. The ANA Commissioner determines the final action on each grant application received under ANA program announcements. The Commissioner's funding decision is based on an analysis of the application by each peer review panel, the review and recommendations of ANA staff, panel review scores, comments of State and Federal agencies having contract and grant performance related information, and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. *(Legal authority: Sections 803(a) and (d), 803C and 806 of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b, 2991b–3 and 2991d–1)*

19. (d) Award Notification Information

Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement. Unsuccessful applicants should expect notification within 90 days after the closing deadline date. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

20. Web Site Information

In FY 2004, ANA may make public on its web site information associated with successfully funded applications. Such information will include the name of the grant recipient, type of award such as SEDS, Language, Environmental amount, the duration of the project, and a synopsis of the project. Posting this information will provide prospective applicants with examples of successfully funded projects, inform the public how and where ANA is expending its funds, and share information with other HHS, ACF, federal and state agencies. The ANA website will also include profiles of successful ANA community projects, and it will provide links to other funding sources, information on special HHS, ACF and ANA initiatives, and provide an opportunity for ANA applicants to tract the review and approval process of submitted applications for funding. *(Legal authority: Sections 803(a) and (d) and 803C of the Native Americans Programs Act of 1974, as amended, 42 U.S.C. 2991b and 2991b–3)*

21. New OMB Format Requirements

The Office of Management and Budget has changed the format for program announcements published in the **Federal Register**. ANA has modified its normal program announcement format to comply with these changes.

Additional Information

Reporting Requirements

Correction: The Social and Economic Development Strategies program announcement included in the November **Federal Register** Notice has a typographical error in one of the references to the Reporting Requirements. The Financial Status reports (SF269) will be submitted on a quarterly basis and not semi-annually as incorrectly stated on 68 FR 64685, 64707 (November 14, 2003). Under 45 CFR 74.52(a)(1)(iii) and 45 CFR 92.41(b)(3), HHS awarding agencies are authorized to require grantees to submit Form 269s as frequently as quarterly.

Dated: February 12, 2004.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 04–5043 Filed 3–5–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0266]

Determination That LOVENOX (Enoxaparin Sodium) 90 Milligrams/0.6 Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that LOVENOX (enoxaparin sodium) 90 milligrams (mg)/0.6 milliliter (mL) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for enoxaparin sodium 90 mg/0.6 mL.

FOR FURTHER INFORMATION CONTACT: Nicole Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval

of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

LOVENOX (enoxaparin sodium) 90 mg/0.6 mL, is the subject of approved NDA 20–164 held by Aventis Pharmaceuticals, Inc. (Aventis). LOVENOX (enoxaparin sodium) 90 mg/0.6 mL, approved June 2, 2000, is an anticoagulant indicated for the prophylaxis of deep vein thrombosis, which may lead to pulmonary embolism. Aventis never marketed the 90mg/0.6 mL presentation of LOVENOX. On June 10, 2003, Olsson, Frank and Weeda, P.C. submitted a citizen petition (Docket No. 2003P–0266) under § 314.161 and 21 CFR 10.21(a) and 10.30, requesting that the agency determine whether LOVENOX (enoxaparin sodium) 90 mg/0.6 mL was withdrawn from sale for reasons of safety or effectiveness. The agency has determined that, for purposes of § 314.161(a) and (c), never marketing an approved drug product is equivalent to withdrawing the drug from sale.

The agency has determined that Aventis' LOVENOX (enoxaparin sodium) 90 mg/0.6 mL was not withdrawn from sale for reasons of safety or effectiveness. In support of this finding, we note that Aventis continues to market other presentations of LOVENOX that are the same concentration as LOVENOX 90 mg/0.6 mL. FDA has independently evaluated relevant literature and data for adverse event reports and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, Aventis' LOVENOX (enoxaparin sodium) 90 mg/0.6 mL was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list LOVENOX (enoxaparin sodium) 90 mg/0.6 mL in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to LOVENOX (enoxaparin sodium) 90 mg/0.6 mL may be approved by the agency.

Dated: February 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5106 Filed 3–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1997D–0530]

Food and Drug Adminstration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 009

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled "Modifications of the List of Recognized Standards, Recognition List Number: 009" (Recognition List Number: 009), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of "Modification to the List of Recognized Standards, Recognition List Number: 009" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–443–8818. Submit written comments concerning this document or to recommend additional standards for recognition to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by e-mail: *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.fda.gov/cdrh/fedregin.html*. See section VI of this document for electronic access to the searchable database for the current list of "FDA Recognized Consensus Standards," including Recognition List Number: 009 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Carol L. Herman, Center for Devices and Radiological Health (CDRH) (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4766, ext.156.

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards, developed by international and national organizations, for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of guidance entitled "Recognition and Use of Consensus Standards." This notice described how FDA will implement its standard recognition program and provided the initial list of recognized standards.

In **Federal Register** notices published on October 16, 1998 (63 FR 55617), July 12, 1999 (64 FR 37546), November 15, 2000 (65 FR 69022), May 7, 2001 (66 FR 23032), January 14, 2002 (67 FR 1774), October 2, 2002 (67 FR 61893), and April 28, 2003 (68 FR 22391), FDA modified its initial list of recognized standards. These notices described the addition, withdrawal, and revision of certain standards recognized by FDA. The agency maintains "hypertext markup language (HTML)" and "portable document format (PDF)" versions of the list of "FDA Recognized Consensus Standards." Both versions are publicly accessible at the agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 009

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will

incorporate these modifications in the list of "FDA Recognized Consensus Standards" in the agency's searchable database. FDA will use the term "Recognition List Number: 009" to identify these current modifications.

In the following table, FDA describes modifications that involve: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the agency is making that involve the initial addition of standards not previously recognized by FDA.

A. Biocompatibility

Old Item No.	Standard	Change	Replacement Item No.
36	ASTM F1408–02e1, Standard Practice for Subcutaneous Screening Test for Implant Materials	Withdrawn and replaced with newer version.	71
16	ASTM F1439–02, Standard Guide for Performance of Lifetime Bioassay for the Tumorigenic Potential of Implant Materials	Withdrawn and replaced with newer version.	72
65	ASTM F2065–00e1, Standard Practice for Testing for Alternative Pathway Complement Activation in Serum by Solid Materials	Withdrawn and replaced with newer version.	73
58	USP 26–NF 21 <87>, Biological Reactivity Test, In Vitro—Direct Contact Test	Withdrawn and replaced with newer version.	74
59	USP 26–NF 21 <87>, Biological Reactivity Test, In Vitro—Elution Test	Withdrawn and replaced with newer version.	75
60	USP 26–NF 21<88>, Biological Reactivity Tests, In Vivo—Procedure—Preparation of Sample	Withdrawn and replaced with newer version.	76
61	USP 26–NF 21<88>, Biological Reactivity Test, In Vivo—Intracutaneous Test	Withdrawn and replaced with newer version.	77
62	USP 26–NF 21<88>, Biological Reactivity Tests, In Vivo—Systemic Injection Test	Withdrawn and replaced with newer version	78

B. Dental/ENT

Old Item No.	Standard	Change	Replacement Item No.
46	ANSI/ADA Specification No. 14:1998, Dental Base Metal Casting Alloys	Withdrawn and replaced with newer version; Contact person	94
49	ANSI/ADA Specification No. 17:1999, Denture Base Temporary Relining Resin	Withdrawn and replaced with newer version.	95
53	ANSI/ADA Specification No. 30:2002, Dental Zinc Oxide-Eugenol and Zinc Oxide Non-Eugenol Cements	Withdrawn and replaced with newer version.	96
56	ANSI/ADA Specification No. 57:2000, Endodontic Sealing Materials	Withdrawn and replaced with newer version.	97
60	ANSI/ADA Specification No. 96:2000, Dental Water-Based Cements	Withdrawn and replaced with newer version.	98
66	ISO 4049:2000, Dentistry—Polymer-Based Filling, Restorative and Luting Materials	Withdrawn and replaced with newer version.	99
71	ISO 6876:2001, Dental Root Canal Sealing Materials	Withdrawn and replaced with newer version.	100
77	ISO 8891:1998, Dental Casting Alloys with Noble Metal Content of At Least 25% but less than 75%	Withdrawn and replaced with newer version; Contact person	101
79	ISO 9693, Metal-Ceramic Dental Restorative Systems	Withdrawn and replaced with newer version; Contact person	102

C. General Hospital/General Plastic Surgery

Old Item No.	Standard	Change	Replacement Item No.
82	USP 26, Nonabsorbable Surgical Sutures	Withdrawn and replaced with newer version	97
88	USP 26 <11>, Sterile Sodium Chloride for Irrigation	Withdrawn and replaced with newer version	98
89	USP 26, Absorbable Surgical Sutures	Withdrawn and replaced with newer version	99
90	USP 26 <881>, Tensile Strength	Withdrawn and replaced with newer version	100
91	USP 26 <861>, Sutures—Diameter	Withdrawn and replaced with newer version	101
92	USP 26<871>, Sutures Needle Attachment	Withdrawn and replaced with newer version	102
93	USP 26, Sterile Water for Irrigation	Withdrawn and replaced with newer version	103
94	USP 26, Heparin Lock Flush Solution	Withdrawn and replaced with newer version	104
95	USP 26, Sodium Chloride Injection	Withdrawn and replaced with newer version	105
33	ASTM D3772–01, Standard Specification for Rubber Finger Cots	Withdrawn and replaced with newer version	106
5	ASTM F882–84 (2002), Standard Performance and Safety Specification for Cryosurgical Medical Instrumentation	Withdrawn and replaced with newer version	107

D. In Vitro Diagnostic

Old Item No.	Standard	Change	Replacement Item No.
14	NCCLS C24–A2 Statistical Quality Control for Quantitative Measurements: Principles and Definitions: Approved Guideline—Second Edition	Withdrawn and replaced with newer version	85
17	NCCLS C29–A2 Standardization of Sodium and Potassium Ion Selective Electrode Systems to the Flame Photometric Reference Method; Approved Standard—Second Edition	Withdrawn and replaced with newer version	86
19	NCCLS C31–A2 Ionized Calcium Determinations: Precollection Variables, Specimen Choice, Collection and Handling: Approved Guideline—Second Edition	Withdrawn and replaced with newer version	87
2	NCCLS EP09–A2 Method Comparison and Bias Estimation Using Patient Samples; Approved Guideline—Second Edition	Withdrawn and replaced with newer version	92
66	NCCLS EP10–A2 Preliminary Evaluation of Quantitative Clinical Laboratory Methods; Approved Guideline—Second Edition	Withdrawn and replaced with newer version	93

E. Materials

Old Item No.	Standard	Change	Replacement Item No.
1	ASTM F67–00, Standard Specification for Unalloyed Titanium for Surgical Implant Applications (UNS R50250, UNS R50550, UNS R50700)	Update "Process(es) Impacted" to include Design Controls.	1

Old Item No.	Standard	Change	Replacement Item No.
2	ASTM F75–01, Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Castings and Casting Alloy for Surgical Implants (UNS R30075)	Update "Process(es) Impacted" to include Design Controls.	2
3	ASTM F90–01, Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy for Surgical Implant Applications (UNS R30605)	Update "Process(es) Impacted" to include Design Controls.	3
5	ASTM F138–00, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants (UNS S31673)	Update "Process(es) Impacted" to include Design Controls.	5
6	ASTM F139–00, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Sheet and Strip for Surgical Implants (UNS S31673)	Update "Process(es) Impacted" to include Design Controls.	6
7	ASTM F560–98, Standard Specification for Unalloyed Tantalum for Surgical Implant Applications (UNS R05200, UNS R05400)	Update "Process(es) Impacted" to include Design Controls.	7
9	ASTM F563–00, Standard Specification for Wrought Cobalt–20 Nickel–20 Chromium–3.5 Molybdenum–3.5 Tungsten–5 Iron Alloy for Surgical Implant Applications (UNS R30563)	Update "Process(es) Impacted" to include Design Controls.	9
10	ASTM 603–00, Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implant Application	Update "Process(es) Impacted" to include Design Controls.	10
11	ASTM 620–00, Standard Specification for Titanium–6 Aluminum–4 Vanadium ELI Alloy Forgings for Surgical Implants (UNS R56401)	Update "Process(es) Impacted" to include Design Controls.	11
13	ASTM F648–00, Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants	Update "Process(es) Impacted" to include Design Controls.	13
14	ASTM 688–00, Standard Specification for Wrought Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants	Update "Process(es) Impacted" to include Design Controls.	14
15	ASTM F745–00, Standard Specification for 18 Chromium–12.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications	Update "Process(es) Impacted" to include Design Controls.	15
16	ASTM F746–87 (1999), Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials	Update "Process(es) Impacted" to include Design Controls.	16
19	ASTM F961–96, Standard Specification for Cobalt–35 Nickel–20 Chromium–10 Molybdenum Alloy Forgings for Surgical Implants (UNS R30035)	Update "Process(es) Impacted" to include Design Controls.	19
21	ASTM F1088–87(1992)e1, Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation	Update "Process(es) Impacted" to include Design Controls.	21
25	ASTM F1295–01, Standard Specification for Wrought Titanium–6 Aluminum–7 Niobium Alloy for Surgical Implant Applications	Update "Process(es) Impacted" to include Design Controls.	25
26	ASTM F1314–01, Standard Specification for Wrought Nitrogen Strengthened–22 Chromium–12.5 Nickel–5 Manganese–2.5 Molybdenum Stainless Steel Bar and Wire for Surgical Implants	Update "Process(es) Impacted" to include Design Controls.	26
27	ASTM F1341–99, Standard Specification for Unalloyed Titanium Wire for Surgical Implant Applications	Update "Process(es) Impacted" to include Design Controls.	27
30	ASTM F1537–00, Standard Specification for Wrought Cobalt–28–Chromium–6–Molybdenum Alloy for Surgical Implants	Update "Process(es) Impacted" to include Design Controls.	30

Old Item No.	Standard	Change	Replacement Item No.
32	ASTM F1586–02, Standard Specification for Wrought Nitrogen Strengthened–21 Chromium–10 Nickel–3 Manganese–2.5 Molybdenum Stainless Steel Bar for Surgical Implants	Update "Process(es) Impacted" to include Design Controls.	32
33	ASTM F1609–95, Standard Specification for Calcium Phosphate Coatings for Implantable Materials	Update "Process(es) Impacted" to include Design Controls.	33
34	ASTM F1659–95, Standard Test Method for Bending and Shear Testing of Calcium Phosphate Coatings on Solid Metallic Substrates	Update "Process(es) Impacted" to include Design Controls.	34
35	ASTM F1713–96, Standard Specification for Wrought Titanium–13 Niobium–13 Zirconium Alloy for Surgical Implant Applications	Clarification of Extent of Recognition; Update "Process(es) Impacted" to include Design Controls.	35
36	ASTM F1801–97, Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials	Update "Process(es) Impacted" to include Design Controls.	36
37	ASTM F1813–01, Standard Specification for Wrought Titanium—12 Molybdenum–6 Zirconium–2 Iron Alloy for Surgical Implant (UNS R58120)	Clarification of Extent of Recognition; Update "Process(es) Impacted" to include Design Controls.	37
38	ASTM F2005–00, Standard Terminology for Nickel-Titanium Shape Memory Alloys	Update "Process(es) Impacted" to include Design Controls.	38
39	ASTM F2052–00, Standard Test Method for Measurement of Magnetically Induced Displacement Force on Passive Implants in the Magnetic Resonance Environment	Update "Process(es) Impacted" to include Design Controls.	39
40	ASTM F2063–00, Standard Specification for Wrought Nickel-Titanium Shape Memory Alloys for Medical Devices and Surgical Implants	Cardiovascular contact person. Clarification to Extent of Recognition with regard to biocompatibility requirements.	40
41	ASTM F2066–01, Standard Specification for Wrought Titanium–15 Molybdenum Alloy for Surgical Implant Applications (UNS R58150)	Cardiovascular contact person; Clarification to Extent of Recognition	41
43	ASTM F2146–01, Standard Specification for Wrought Titanium–3Aluminum–2.5Vanadium Alloy Seamless Tubing for Surgical Implant Applications (UNS R56320)	Cardiovascular contact person; Clarification to Extent of Recognition	43
44	ASTM F136–02, Standard Specification for Wrought Titanium–6 Aluminum–4 Vanadium ELI (Extra Low Interstitial) Alloy for Surgical Implant Applications (UNS R56401)	Update "Process(es) Impacted" to include Design Controls.	44
45	ASTM F562–02, Standard Specification for Wrought 35Cobalt–35Nickel–20Chromium–10Molybdenum Alloy for Surgical Implant Applications (UNS R30035)	Update "Process(es) Impacted" to include Design Controls.	45
46	ASTM F621–02, Standard Specification for Stainless Steel Forgings for Surgical Implants	Update "Process(es) Impacted" to include Design Controls	46
47	ASTM F799–02, Standard Specification for Cobalt–28 Chromium–6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539)	Update "Process(es) Impacted" to include Design Controls.	47
48	ASTM F899–02, Standard Specification for Stainless Steel for Surgical Instruments	Update "Process(es) Impacted" to include Design Controls.	48
49	ASTM F1058–02, Standard Specification for Wrought 40Cobalt–20Chromium–16Iron–15Nickel–7Molybdenum Alloy Wire and Strip for Surgical Implant Applications (UNS R30003 and UNS R30008)	Update "Process(es) Impacted" to include Design Controls.	49
50	ASTM F1091–02, Standard Specification for Wrought Cobalt–20 Chromium–15 Tungsten–10 Nickel Alloy Surgical Fixation Wire (UNS R30605)	Update "Process(es) Impacted" to include Design Controls.	50

Old Item No.	Standard	Change	Replacement Item No.
51	ASTM 1108–02, Standard Specification for Titanium -6Aluminum -4Vanadium Alloy Castings for Surgical Implants (UNS R56406)	Update "Process(es) Impacted" to include Design Controls.	51
52	ASTM F1350–02, Standard Specification for Wrought 18 Chromium–14 Nickel–2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673)	Update "Process(es) Impacted" to include Design Controls.	52
53	ASTM F1472–02, Standard Specification for Wrought Titanium -6Aluminum -4Vanadium Alloy for Surgical Implant Applications (UNS R56400)	Update "Process(es) Impacted" to include Design Controls.	53
54	ASTM F1580–01, Standard Specification for Titanium and Titanium–6 Aluminum–4 Vanadium Alloy Powders for Coatings of Surgical Implants	Update "Process(es) Impacted" to include Design Controls.	54
55	ASTM F2182–02, Standard Test Method for Measurement of Radio Frequency Induced Heating Near Passive Implants During Magnetic Resonance Imaging	Update "Process(es) Impacted" to include Design Controls.	55
Dental 30 Ortho 62	ISO 5832–1:1997, Implants for Surgery—Metallic Materials—Part 1: Wrought stainless steel	Transferred from dental/ENT and orthopaedics.	56
Dental 31 Ortho 117	ISO 5832–2:1999, Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium	Transferred from dental/ENT and orthopaedics.	57
Dental 32 Ortho 64	ISO 5832–3:1996, Implants for Surgery—Metallic Materials—Part 3: Wrought titanium 6–aluminium 4–vanadium alloy	Transferred from dental/ENT and orthopaedics.	58
Dental 33 Ortho 65	ISO 5382–4:1996, Implants for Surgery—Metallic Materials—Part 4: Cobalt-chromium-molybdenum casting alloy	Transferred from dental/ENT and orthopaedics.	59
Dental 34 Ortho 66	ISO 5832–5:1993, Implants for Surgery—Metallic Materials—Part 5: Wrought cobalt-chromium-tungsten-nickel alloy	Transferred from dental/ENT and orthopaedics.	60
Dental 35 Ortho 67	ISO 5832–6:1997, Implants for Surgery—Metallic Materials—Part 6: Wrought cobalt-nickel-chromium-molybdenum alloy	Transferred from dental/ENT and orthopaedics.	61
Dental 36 Ortho 118	ISO 5832–9: 1992, Implants for Surgery—Metallic Materials—Part 9: Wrought high nitrogen stainless steel	Transferred from dental/ENT and orthopaedics.	62
Dental 38 Ortho 70	ISO 5832–11: 1994, Implants for Surgery—Metallic Materials—Part 11: Wrought titanium 6–aluminium 7–niobium alloy	Transferred from dental/ENT and orthopaedics.	63
Dental 39 Ortho 71	ISO 5832–12: 1996, Implants for Surgery—Metallic Materials—Part 12: Wrought cobalt-chromium-molybdenum alloy	Transferred from dental/ENT and orthopaedics.	64
Ortho 119	ISO 5834–2: 1998, Implants for Surgery—Ultra-High-Molecular-Weight Polyethylene—Part 2: Moulded Forms	Transferred from orthopaedics.	65
Ortho 76	ISO 6474:1994, Implants for Surgery—Ceramic materials based on high purity alumina	Transferred from orthopaedics.	66
Ortho 143	ISO 7153–1:1991/Amd 1:1999, Surgical Instruments—Metallic Materials—Part 1: Stainless steel	Transferred from orthopaedics.	67
Ortho 84	ISO 13782: 1996, Implants for Surgery—Metallic Materials—Unalloyed tantalum for surgical implant applications	Transferred from orthopaedics.	68
Dental 37	ISO 5832–10:1996, Implants for Surgery—Metallic Materials—Part 10: Wrought titanium 5–aluminium 2,5–iron	Transferred from dental/ENT.	69

F. Ophthalmic

Old Item No.	Standard	Change	Replacement Item No.
30	ANSI Z80.7–2002: Ophthalmics—Intraocular Lenses	Correction in publication date	30

G. Orthopaedics

Old Item No.	Standard	Change	Replacement Item No.
58	ASTM F1781–97, Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants	Added "Design Controls" to Process(es) Impacted	58
62	ISO 5832–1:1997, Implants for Surgery—Metallic materials—Part 1: Wrought stainless steel	Withdrawn and transferred to Materials	62
64	ISO 5832–3:1996, Implants for Surgery—Metallic materials—Part 3: Wrought titanium 6–aluminum 4–vanadium alloy	Withdrawn and transferred to Materials	64
65	ISO 5832–4:1996, Implants for Surgery—Metallic materials—Part 4: Cobalt-chromium-molybdenum casting alloy	Withdrawn and transferred to Materials	65
66	ISO 5832–5:1993, Implants for Surgery—Metallic materials—Part 5: Wrought cobalt-chromium-tungsten-nickel alloy	Withdrawn and transferred to Materials	66
67	ISO 5832–6:1997, Implants for Surgery—Metallic materials—Part 6: Wrought cobalt-nickel-chromium-molybdenum alloy	Withdrawn and transferred to Materials	67
70	ISO 5832–11:1994, Implants for Surgery—Metallic materials—Part 11: Wrought titanium 6–aluminum 7–niobium alloy	Withdrawn and transferred to Materials	70
71	ISO 5832–12:1996, Implants for Surgery—Metallic materials—Part 12: Wrought cobalt-chromium-molybdenum alloy	Withdrawn and transferred to Materials	71
73	ISO 5838–1:1995, Implants for Surgery—Skeletal Pins and Wires—Part 1: Material and Mechanical Requirements	Added "Design Controls" to Process(es) Impacted	73
74	ISO 5838–2:1991, Implants for Surgery—Skeletal Pins and Wires—Part 2: Steinmann Skeletal Pins—Dimensions	Added "Design Controls" to Process(es) Impacted	74
75	ISO 5838–3:1993, Implants for Surgery—Skeletal Pins and Wires—Part 3: Kirschner Skeletal Wires	Added "Design Controls" to Process(es) Impacted	75
76	ISO 6474–94, Implants for surgery—Ceramic materials based on high purity alumina	Withdrawn and transferred to Materials	
78	ISO 7206–4:2002, Implants for Surgery—Partial and Total Hip Joint Prostheses—Part 4: Determination of Endurance Properties of Stemmed Femoral Components	Withdrawn and replaced with newer version; Title change; Added "Design Controls" to Process(es) Impacted	165
79	ISO 7206–8:1995, Implants for Surgery—Partial and Total Hip Joint Prostheses—Part 8: Endurance Performance of Stemmed Femoral Components with Application of Torsion	Added "Design Controls" to Process(es) Impacted	79
83	ISO 13402–95, Surgical and Dental Hand Instruments—Determination of Resistance Against Autoclaving, Corrosion and Thermal Exposure	Added "Design Controls" to Process(es) Impacted	83
84	ISO 13782:1996, Implants for Surgery—Metallic materials—Unalloyed tantalum for surgical implant applications	Withdrawn and transferred to Materials	
85	ISO 14630:1997, Non-Active Surgical Implants—General Requirements	Added "Design Controls" to Process(es) Impacted	85

Old Item No.	Standard	Change	Replacement Item No.
101	ASTM F897–02, Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws	Withdrawn and replaced with newer version; Added "Design Controls" to Process(es) Impacted	166
104	ASTM F1089–02, Standard Test Method for Corrosion of Surgical Instruments	Withdrawn and replaced with newer version; Added "Design Controls" to Process(es) Impacted	167
107	ASTM F1147–99, Standard Test Method for Tension Testing of Calcium Phosphate and Metallic Coatings	Added "Design Controls" to Process(es) Impacted	107
111	ASTM F1814–97a, Standard Guide for Evaluating Modular Hip and Knee Joint Components	Added "Design Controls" to Process(es) Impacted	111
113	ASTM F1377–98a, Standard Specification for Cobalt–28 Chromium–6 Molybdenum Powder for Coating of Orthopedic Implants (UNS R30075)	Added "Design Controls" to Process(es) Impacted	113
114	ASTM F1798–97, Standard Guide for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis Implants	Added "Design Controls" to Process(es) Impacted	114
115	ASTM F1800–97, Standard Test Method for Cyclic Fatigue Testing of Metal Tibial Tray Components of Total Knee Joint Replacements	Added "Design Controls" to Process(es) Impacted	115
117	ISO 5832–2:1999, Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium	Withdrawn and transferred to Materials	
118	ISO 5832–9:1992, Implants for Surgery—Metallic Materials—Part 9: Wrought High Nitrogen Stainless Steel	Withdrawn and transferred to Materials	
119	ISO 5834–2:1998, Implants for Surgery—Ultra-High-Molecular Weight Polyethylene—Part 2: Moulded Forms	Withdrawn and transferred to Materials	
120	ASTM F382–99, Standard Specification and Test Method for Metallic Bone Plates	Added "Design Controls" to Process(es) Impacted	120
121	ISO 7207–1:1994, Implants for Surgery—Components for partial and total knee joint prostheses—Part 1: Classification, definitions and designation of dimensions	Added "Design Controls" to Process(es) Impacted	121
126	ASTM F366–82(2000), Standard Specification for Fixation Pins and Wires	Added "Design Controls" to Process(es) Impacted	126
131	ASTM F1044–99, Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings	Added "Design Controls" to Process(es) Impacted	131
140	ASTM F1582–98, Standard Terminology Relating to Spinal Implants	Added "Design Controls" to Process(es) Impacted	140
141	ASTM F1612–95(2000), Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components With Torsion	Added "Design Controls" to Process(es) Impacted	141
142	ASTM F1672–95(2000), Standard Specification for Resurfacing Patellar Prosthesis	Added "Design Controls" to Process(es) Impacted	142
143	ISO 7153–1:1991/Amd. 1:1999, Surgical Instruments—Metallic Materials—Part 1: Stainless steel	Withdrawn and transferred to Materials	143
152	ASTM F1160–00e1, Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings	Added "Design Controls" to Process(es) Impacted	152
155	ISO 7207–2:1998, Implants for Surgery—Components for partial and total knee joint prostheses—Part 2: Articulating surfaces made of metal, ceramic and plastics materials	Added "Design Controls" to Process(es) Impacted	155

Old Item No.	Standard	Change	Replacement Item No.
159	ASTM F1717–01, Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model	Added "Design Controls" to Process(es) Impacted	159
161	ASTM F1264–01, Standard Specification and Test Methods for Intramedullary Fixation Devices	Added "Design Controls" to Process(es) Impacted	161
162	ASTM F564–02, Standard Specification and Test Methods for Metallic Bone Staples	Added "Design Controls" to Process(es) Impacted	162
163	ASTM F543–02 Standard Specification and Test Methods for Metallic Medical Bone Screws	Added "Design Controls" to Process(es) Impacted	163
164	ASTM F1541–02, Standard Specification and Test Methods for External Skeletal Fixation Devices	Added "Design Controls" to Process(es) Impacted	164

H. Radiology

Old Item No.	Standard	Change	Replacement Item No.
38	IEC 60601–2–15, Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Capacitor Discharge X-ray Generators (1988)	Withdrawn	
43	IEC 60601–2–33: Medical Electrical Equipment—Part 2, Particular Requirements for the Safety of Magnetic Resonance Equipment for Medical Diagnosis (2002–2005)	Withdrawn and replaced with newer version	86
60	IEC 61217 (2002–03), Radiotherapy Equipment—Coordinates, movements, and scales	Withdrawn and replaced with newer version	87
64	IEC 60601–2–45, Ed. 2.0, (2001–05): Medical Electrical Equipment—Part 2–45: Particular Requirements for the Safety of Mammographic X-ray Equipment and Mammographic Stereotactic Devices	Correction date inserted	64
78	NEMA PS 3.1 through PS 3.16 2000, Digital Imaging and Communications in Medicine (DICOM)	Correction Parts inserted in title	78

I. Sterility

Old Item No.	Standard	Change	Replacement Item No.
1	AOAC 6.2.01:2000, Official Method 955.14, Testing Disinfectants Against *Salmonella choleraesuis*, Use-Dilution Method	Withdrawn and replaced with newer version	94
2	AOAC 6.2.02:2000, Official Method 991.47, Testing Disinfectants Against *Salmonella choleraesuis*, Hard Surface Carrier Test Method	Withdrawn and replaced with newer version	95
3	AOAC 6.2.03:2000, Official Method 99l.48, Testing Disinfectants Against *Staphylococcus aureus*, Hard Surface Carrier Test Method	Withdrawn and replaced with newer version.	96
4	AOAC 6.2.04:2000, Official Method 955.15, Testing Disinfectants Against *Staphylococcus aureus*, Use-Dilution Method	Withdrawn and replaced with newer version	97
5	AOAC 6.2.05:2000, Official Method 99l.49, Testing Disinfectants Against *Pseudomonas aeruginosa*, Hard Surface Carrier Test Method	Withdrawn and replaced with newer version	98
6	AOAC 6.2.06:2000, Official Method 964.02, Testing Disinfectants Against *Pseudomonas aeruginosa*, Use-Dilution Method	Withdrawn and replaced with newer version	99

Old Item No.	Standard	Change	Replacement Item No.
7	AOAC 6.3.02, Official Method 955.17, Fungicidal Activity of Disinfectants Using *Trichophyton mentagrophytes*	Withdrawn and replaced with newer version	100
8	AOAC 6.3.05:2000, Official Method 966.04, Sporicidal Activity of Disinfectants	Withdrawn and replaced with newer version	101
9	AOAC 6.3.06:2000, Official Method 965.12, Tuberculocidal Activity of Disinfectants	Withdrawn and replaced with newer version	102
24	ANSI/AAMI/ISO 11134:1993, Sterilization of Health Care Products—Requirements for Validation and Routine Control-Industrial Moist Heat Sterilization	Contact person	24
25	ANSI/AAMI/ISO 11135–1994, Medical Devices—Validation and Routine Control of Ethylene Oxide Sterilization	Contact person	25
27	AAMI/ANSI/ISO 11607:2000, Packaging for Terminally Sterilized Medical Devices	Withdrawn and replaced with newer version; Add to Extent of Recognition	103
51	ANSI/AAMI ST58:1996, Safe Use and Handling of Glutaraldehyde-Based Products in Health Care Facilities and ANSI/AAMI ST58:1996/Amendment 1 2002	Withdrawn and replaced with newer version	104
52	ANSI/AAMI ST59:1999, Sterilization of Health Care Products—Biological Indicators Part 1: General Requirements	Updated Relevant Guidance	52
73	ANSI/AAMI ST46:2002, Steam Sterilization and Sterility Assurance in Health Care Facilities	Withdrawn and replaced with newer version	105
75	ANSI/AAMI/ISO 11137:1994, Sterilization of Health Care Products-Requirements for Validation and Routine Control-Radiation Sterilization and ISO11137:1995 (Amendment 1:2002)	Title Correction; Additional Relevant Guidance; Contact person	75
76	AAMI/ANSI/ISO 10993–7:1995 (R) 2001, Biological Evaluation of Medical Devices—Part 7: Ethylene Oxide Sterilization Residuals	Delete (e.g. hemodialyzers) from the Extent of Recognition	76
78	USP 26:2003, Biological Indicator for Dry Heat Sterilization, Paper Carrier	Withdrawn and replaced with newer version	106
79	USP 26:2003, Biological Indicator for Ethylene Oxide Sterilization, Paper Carrier	Withdrawn and replaced with newer version	107
80	USP 26:2003, Biological Indicator for Steam Sterilization, Paper Carrier	Withdrawn and replaced with newer version	108
81	USP 26:2003, <61> Microbial Limits Test	Withdrawn and replaced with newer version	109
82	USP 26:2003, <71>, Microbiological Tests, Sterility Tests	Withdrawn and replaced with newer version	110
83	USP 26:2003, <85> Biological Tests and Assays, Bacterial Endotoxin Test (LA)	Withdrawn and replaced with newer version	111
84	USP 26:2003, <151> Pyrogen Test (USP Rabbit Test)	Withdrawn and replaced with newer version	112
85	USP 26:2003 <1211> Sterilization and Sterility Assurance of Compendial Articles	Withdrawn and replaced with newer version	113
87	USP 26:2003, Transfusion and Infusion Assemblies and Similar Medical Devices <161>	Withdrawn and replaced with newer version	114
93	USP 26:2003, Biological Indicator for Steam Sterilization	Withdrawn and replaced with newer version	115

III. Listing of New Entries

The listing of new entries and consensus standards added as "Modifications to the List of Recognized Standards", under Recognition List Number: 009," is as follows:

A. Anesthesia

Item No.	Title of Standard	Reference No. and Date
45	Standard Specification for Ventilators Intended for use During Anesthesia	F1101–90 (1996)
46	Breathing Tubes Intended for use with Anesthetic Apparatus and Ventilators	ISO 5367:2000

B. Biocompatibility

Item No.	Title of Standard	Reference No. and Date
79	Standard Practice for Extraction of Medical Plastics	ASTM F619–02
80	Standard Practice for Characterization of Particles	ASTM F1877–98
81	Standard Practice for Selecting Tests for Determining the Propensity of Materials to Cause Immunotoxicity	ASTM F1905–98
82	Standard Practice for Evaluation of Immune Responses In Biocompatibility Testing Using ELISA Tests, Lymphocyte, Proliferation, and Cell Migration	ASTM F2147–01

C. Cardiovascular/Neurology

Item No.	Title of Standard	Reference No. and Date
50	Cardiac Defibrillator Devices	ANSI/AAMI DF2–1996 (Revision of ANSI/AAMI DF2–1989)
51	Automatic External Defibrillators and Remote-Control Defibrillators	ANSI/AAMI DF39–1993

D. Dental/ENT

Item No.	Title of Standard	Reference No. and Date
103	Denture Base Polymers	ANSI/ADA Specification No. 12:1999
104	Pit and Fissure Sealants	ANSI/ADA Specification No. 39: 1999
105	Resilient Lining Materials for Removable Dentures, Part 2: Short-Term Materials	ANSI/ADA Specification No. 75: 1997
106	Dental Reversible/Irreversible Hydrocolloid Impression Material System	ANSI/ADA Specification No. 82: 1998
107	Dental, Water-Based Cements	ISO 9917–2:1998
108	Dentistry, Resilient Lining Materials for Removable Dentures—Part 1: Short-Term Materials	ISO 10139–1:1991
109	Dentistry, Reversible-Irreversible Hydrocolloid Impression Material Systems	ISO 13716: 1999

E. In Vitro Diagnostic

Item No.	Title of Standard	Reference No. and Date
88	Preparation and Validation of Commutable Frozen Human Serum Pools as Secondary Reference Materials for Cholesterol Measurement Procedures: Approved Guideline	NCCLS C37–A:1999
89	A Designated Comparison Method for the Measurement of Ionized Calcium in Serum; Approved Standard	NCCLS C39–A:2000
90	Clinical Application of Flow Cytometry: Immunophenotyping of Leukemic Cells; Approved Guideline	NCCLS H43–A:1998
91	Interference Testing in Clinical Chemistry; Approved Guideline	NCCLS EP7–A:2002
94	User Protocol for Evaluation of Qualitative Test Performance; Approved Guideline	NCCLS EP12–A:2002
95	User Demonstration of Performance for Precision and Accuracy; Approved Guideline	NCCLS EP15–A:2001
96	Quality Management for Unit-Use Testing; Approved Guideline	NCCLS EP18–A:2002
97	Urinalysis and Collection, Transportation, and Preservation of Urine Specimens—Second Edition; Approved Guideline	NCCLS GP16–A2:2001

F. OB–GYN/Gastroenterology

Item No.	Title of Standard	Reference No. and Date
28	Hemodialyzers	ANSI/AAMI RD 16:1996/A1:2002 Amendment 1 to ANSI/AAMI RD 16:1996
29	Hemodialyzer Blood Tubing	ANSI/AAMI RD 17:1994/A1:2002 Amendment 1 to ANSI/AAMI RD 17:1994

G. Ophthalmic

Item No.	Title of Standard	Reference No. and Date
31	Optics and Optical Instruments—Lasers and Laser-related Equipment—Test Method for the Laser-resistance of Surgical Drapes and/or Patient-protective Covers	ISO 11810:2002
32	Optics and Optical Instruments—Lasers and Laser-related Equipment—Determination of Laser Resistance of Tracheal Tube Shafts	ISO 11990:2003

H. Radiology

Item No.	Title of Standard	Reference No. and Date
88	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Remote-Controlled Automatically-Driven Gamma-Ray Afterloading Equipment (1989)	IEC 60601–2–17 (1989)
89	Optics and optical instruments—Lasers and Laser-Related Equipment—Test Method for the Laser-Resistance of Surgical Drapes and/or Patient-Protective Covers	ISO 11810:2002
90	Medical Electrical Equipment—Part 2: Particular Requirements for Medical Electron Accelerators	IEC 60601–2–1 Amendment 1—Ed. 2.0 (2002–05)

Item No.	Title of Standard	Reference No. and Date
91	Medical Electrical Equipment—Part 2: Particular Requirements for the Safety of Therapeutic X-ray Equipment Operating in the Range 10 kV to 1 MV	IEC 60601–2–8 Amendment 1 (1997–98)
92	Medical Electrical Equipment—Dosimeters with Ionization Chambers and/or Semi-Conductor Detectors as used in X-ray Diagnostic Imaging	IEC 61674 (1997–10)
93	Medical Electrical Equipment—Dosimeters with Ionization Chambers and/or Semi-Conductor Detectors as used in X-ray Diagnostic Imaging	IEC 61674 Amendment 1 (2002–06)
94	Medical Electrical Equipment—Dosimeters with Ionization Chambers as used in Radiotherapy	IEC 60731 Amendment 1 (2002–06)

I. Sterility

Item No.	Title of Standard	Reference No. and Date
116	Bacterial Endotoxins—Test Methodologies, Routine Monitoring, and Alternatives to Batch Testing	ANSI/AAMI ST72:2002

J. Tissue Engineering

Item No.	Title of Standard	Reference No. and Date
3	Standard Guide for Characterization of Type 1 Collagen as a Starting Material for Surgical Implants and Substrates for Tissue Engineered Medical Products	ASTM F2212–2002

IV. List of Recognized Standards

FDA maintains the agency's current list of "FDA Recognized Consensus Standards" in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm*. FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the act by submitting such recommendations, with reasons for the recommendation, to the contact person (See **FOR FURTHER INFORMATION CONTACT**). To be properly considered such recommendations should contain, at a minimum, the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the national or international standards development organization, (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

In order to receive "Guidance on the Recognition and Use of Consensus Standards" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number 321 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

You may obtain a copy of "Guidance on the Recognition and Use of Consensus Standards" by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards related documents. After publication in the **Federal Register**, this notice announcing "Modification to the List of Recognized Standards, Recognition List Number: 009" will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/cdrh*. You may access "Guidance on the Recognition and Use of Consensus Standards," and the searchable database for "FDA Recognized Consensus Standards," through hyperlink at *http://www.fda.gov/cdrh/stdsprog.html*. This **Federal Register** notice of modifications in FDA's recognition of consensus standards will be available, upon publication, at *http://www.fda.gov/cdrh/fedregin.html*.

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) written or electronic comments regarding this document. Two copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of "Modifications to the List of Recognized Standards, Recognition List Number:

009." These modifications to the list or recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: February 13, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. E4–479 Filed 3–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0111]

Guidance for Federal Agencies and State and Local Governments; Potassium Iodide Shelf Life Extension; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for Federal agencies and State and local governments entitled "Potassium Iodide Tablets Shelf Life Extension." This document is intended to provide guidance to Federal agencies and to State and local governments on testing to extend the shelf life of stockpiled potassium iodide (KI) tablets.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Richard Adams, Center for Drug Evaluation and Research (HFD–643), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5849.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for Federal agencies and State and local governments entitled "Potassium Iodide Tablets Shelf Life Extension." This guidance is intended to provide Federal agencies and State and local governments with information on testing to extend the shelf life of stockpiled KI tablets. The agency has developed this document in response to several State inquiries on this topic.

On December 11, 2001 (66 FR 64046), FDA provided guidance on the safe and effective use of KI tablets as an adjunct to other public health protective measures in the event that radioactive iodine is released into the environment. The guidance entitled "Potassium Iodide as a Thyroid Blocking Agent in Radiation Emergencies" updated FDA's 1982 recommendations for the use of KI tablets to reduce the risk of thyroid cancer in radiation emergencies involving the release of radioactive iodine. The recommendations in that guidance addressed KI dosage and the projected radiation exposure at which the drug should be used.

On April 2, 2003 (68 FR 16063), FDA made available a draft guidance entitled "Potassium Iodide Tablets Shelf Life Extension." This guidance discussed FDA recommendations on the testing for shelf life extensions, the qualifications of laboratories suitable to conduct the tests, and issues regarding notification of holders of stockpiled KI tablets and end users about changes to batch shelf life once testing has been successfully conducted. The comment period for that draft guidance closed on June 2, 2003. Although the agency received no written comments on the draft guidance, we (FDA) have revised the guidance slightly to recommend confirmatory testing after 2 years, monitoring for discoloration and recordkeeping.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statues and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 28, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5107 Filed 3–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: Progress Reports for Continuation Training Grants (OMB No. 0915–0061)—Extension

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for title VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. Part I of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. Part II collects information on activities specific to a given program. And Part III, Comprehensive Performance Management System, collects data on overall project performance related to the Bureau of Health Profession's strategic goals, objectives, outcomes and indicators. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Title VII and VIII programs. An outcome based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The grantees were able to obtain, and submit progress reports electronically for fiscal year 2001.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Health Care Professionals	1,550	1	1,550	21.5	33,325

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 11A–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 27, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–5046 Filed 3–5–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Program Projects.

Date: March 31, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elaine Lazar-Wesley, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, 301–451–4530.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS.)

Dated: March 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5060 Filed 3–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Project Applications.

Date: March 2, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A. Ansari, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5062 Filed 3–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV/AIDS and Mental Health.

Date: March 19, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fred Altman, PhD, Scientific Review Administrator, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–8962.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: March 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5063 Filed 3–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c0(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Genes, Aneuploidy and Mamalian Development.

Date: March 29, 2004.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopal M. Bhatnagar, Phd, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5064 Filed 3–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognitive Aspects of Parkinson's Disease.

Date: March 3, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. 301–435–0913; *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships in Psychopathology and Disorders of Aging.

Date: March 8, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. 301–435–0913; *shirleym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dentist-Initiated Interventions for Tobacco Control.

Date: March 8, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258; *micklinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel,

Communication Disorders and Language Acquisition.

Date: March 9, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. 301–435–0676; *siroccok@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Therapeutic Strategies in MDS.

Date: March 10, 2004.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892. 301–451–8754; *bellmar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CLHP Member Applications.

Date: March 11, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Yvette M. Davis, MPH, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. (301) 435–0906.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts in Autonomic Functioning During Stress, Anxiety and Depression.

Date: March 11, 2004.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, (301) 435–0692; *roberlu@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cervical Cancer Screening Research.

Date: March 12, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258; *micklinm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BMRD Member Applications.

Date: March 12, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Yvette M. Davis, MPH, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. (301) 435–0906.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urologic and Kidney Development and Genitourinary Diseases.

Date: March 15–16, 2004.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892. (301) 435–1198; *hildens@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Behavioral Pharmacology.

Date: March 15, 2004.

Time: 3:15 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. (301) 594–6836; *tathamt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Urology Small Business.

Date: March 16, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892. (301) 435–1198; *hildens@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fish and Flies.

Date: March 16, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 5168, MSC 7840, Bethesda, MD 20892. 301–435–1256; *hardwood@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Members Conflicts in Language Perception and Processing.

Date: March 16, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3188, MSC 7848, Bethesda, MD 20892. 301–435–0692; *roberlu@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Panel for BSCH and BSPH.

Date: March 17, 2004.

Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 5218, MSC 7852, Bethesda, MD 20892. 301–435–1775; *rubertm@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC (01): HIV/AIDS Vaccines.
Date: March 17–18, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 5104, MSC 7852, Bethesda, MD 20892. 301–435–1165; *walkermc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Behavioral Science Member Conflict Applications.
Date: March 17, 2004.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 5218, MSC 7852, Bethesda, MD 20892. 301–435–1775; *rubertm@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship Applications.
Date: March 17, 2004.
Time: 3 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1775; *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SRB (301): RR03–009: Shared Instrumentation.
Date: March 18, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814 (Telephone conference call.)
Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892. 301–435–1259; *petrosia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MABS 01 Q: Modeling and Analysis of Biological Systems: Quorum.
Date: March 22–23, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892. 301–435–2211; *klosekm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, CLHP Member Applications.
Date: March 23, 2004.
Time: 12:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Yvette M. Davis, MPH, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. 301–435–0906;

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN–B 01M: Member Conflict: Brain Disorders and Clinical Neurosciences IRG.
Date: March 25, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892. 301–435–1254; *benzingw@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, International Bioethics Education and Development.
Date: March 25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. 301–435–1727.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Carcinogenesis Modeling.
Date: March 25, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892. 301–435–3504; *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, T Cell Mediated Immuno Therapy.
Date: March 25, 2004.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)
Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review; National Institutess of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892. (301) 435–1213; *meyerjl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Thrombocytes in Zebrafish—Member Conflict.
Date: March 25, 2004.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rocklege Drive, Bethesda, MD 20892 (Telephone conference call).
Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892. (301) 435–1195.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Respiratory.
Date: March 25, 2004.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rocklege Drive, Bethesda, MD 20892 (Telephone conference call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242; *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology of Diabetes and Kidney Diseases.
Date: March 26, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892. (301) 435–0684; *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Group–B Physiology, Pharmacology and Molecular Structure.

Date: March 26, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–1248; *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology: Genetics, Mental Health, and Substance Abuse.

Date: March 26, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892. (301) 435–1503; *elwoodw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Study of lkB/NF–kB Recognition Special Emphasis Panel.

Date: March 26, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892. (301) 435–1721; *rakhitg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Lung Cancer Genetics.

Date: March 26, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Instiutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutess of Health, 6701 Rockledge Drive, Room 4112, MSC 7804, Bethesda, MD 20892. (301) 435–8551; *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mycoplasma Disease.

Date: March 26, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892. 301–435–2514; *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Environmental Adaptation.

Date: March 26, 2004.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. 301–435–0903.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision/Striatum.

Date: March 26, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. 301–435–1242; *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain: Receptors and Behavior.

Date: March 26, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. 301–435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Functions of Herpes Tegument Proteins.

Date: March 26, 2004.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. 301–435–1151; *pyperj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: March 1, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–5061 Filed 3–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2004–2006 National Survey on Drug Use and Health: Methodological Field Tests—New—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years of age and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal

government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

This will be a request for generic approval for information collection for NSDUH methodological field tests designed to examine the feasibility, quality, and efficiency of new procedures or revisions to the existing survey protocol. These field tests will examine ways to increase data quality, lower operating costs, and gain a better understanding of various sources of nonsampling error. If these tests provide successful results, current procedures may be revised and incorporated into the main study (*e.g.*, questionnaire changes). Particular attention will be given to minimizing the impact of design changes so that survey data continue to remain comparable over time.

Field test activities are expected to include validating new questions on depression; examining data reliability through the use of test-retest procedures; improving response rates among persons residing in controlled access communities (locked apartment buildings, gated communities, college dormitories, *etc.*), persons aged 50 or over, and other hard-to-reach populations; and conducting a nonresponse follow-up study. Cognitive laboratory testing will be conducted prior to the implementation of significant questionnaire modifications. These questionnaire modifications will also be pre-tested and the feasibility of text-to-speech software determined. To understand the effectiveness of the current monetary incentive, a new incentive study will be conducted with varying incentive amounts. The relationship between incentives and veracity of reporting will also be examined. Lastly, there will be a test to determine the feasibility of selecting a maximum of three persons per dwelling unit instead of two (triad sampling). Some of the above studies may be combined to introduce survey efficiencies.

The average annual burden associated with these activities over a three-year period is summarized below.

Activity	Number of respondents	Responses per respondent	Average burden per response (in hrs.)	Total burden (hrs.)
a. Reliability/depression module validity study	667	2	1.5	2,000
b. Improving participation among controlled access and 50+ population, and other hard-to-reach populations	417	1	1.0	417
c. Nonresponse follow-up	417	1	1.0	417
d. Incentive/validity study	417	1	1.0	417
e. Cognitive laboratory testing	167	1	1.0	167
f. Annual questionnaire pre-test	333	1	1.0	333
g. Text-to-speech software for voices in computer-assisted interviewing	83	1	1.0	83
h. Triad sampling	333	1	1.0	333
Household screening for a–d, f, and h	7,167	1	0.083	595
Screening Verification for a–d, f, and h	217	1	0.067	15
Interview Verification for a–d, f, and h	400	1	0.067	27
Total	10,617			4,803

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received by May 7, 2004.

Dated: March 1, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–5068 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

ACTION: Notice of funding availability (NOFA) for Statewide Consumer Network Grants.

Authority: Section 520 A of the Public Health Service Act, as amended and subject to the availability of funds.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), announces the availability of FY 2004 funds for Statewide Consumer Network Grants. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov.*

For complete instructions, potential applicants must obtain a copy of the revised standard Infrastructure Grants Program Announcement [INF–04 PA (MOD)], and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA (MOD) describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including Statewide Consumer Network Grants. Additional instructions and requirements specific to Statewide Consumer Network Grants are described below.

Funding Opportunity Title: Statewide Consumer Network Grants (Short Title: Statewide Consumer Networks).

Announcement Type: Modification.

Funding Opportunity Number: SM 04–003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: April 7, 2004. You will be notified by postal mail that your application has been received.

[**Note:** Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due May 7, 2004.]

Funding Instrument: Grant.

Funding Opportunity Description: This is a republication of the Substance Abuse and Mental Health Services Administration's Notice of Funding Availability SM 04–003. The purpose of this republication is to revise the criteria used to screen out applications from peer review. These revised criteria are consistent with the standard grant announcement for Infrastructure Grants INF–04 PA (MOD).

These revisions can be found in this document, in their entirety, in the

section on Eligible Applicants and the Checklist of Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications.

The deadline for applications has been extended to 30 days after the publication of this NOFA.

The Statewide Consumer Networks program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse service systems to support programs and services. SAMHSA's Infrastructure Grants are intended for applicants seeking Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health service delivery. Statewide Consumer Network Grants are intended for applicants seeking Federal support to act as "Agents of Transformation" in developing or enhancing their service system infrastructure in order to support effective substance abuse and/or mental health service delivery which is consumer driven. The Statewide Consumer Network Grant Program is a critical part of the SAMHSA/CMHS efforts to implement the recommendations of the Final Report of the President's New Freedom Commission on Mental Health.

The purpose of the Statewide Consumer Networks program is to enhance State capacity and infrastructure to be consumer-centered and targeted toward recovery and resiliency and consumer-driven by promoting the use of consumers as agents of transformation. The program goals are to (1) strengthen organizational relationships; (2) promote skill development with an emphasis on leadership and business management; and (3) identify technical assistance needs of consumers and provide training and support to ensure that they are the catalysts for transforming the mental health and related systems in their State. To achieve this goal, the program assists consumer organizations around the country to work with policymakers and services providers to improve services for consumers with a serious mental illness. The Program is designed to strengthen coalitions among consumers, policymakers and service providers, recognizing that the consumers are the best and most effective change agents.

The Statewide Consumer Network grants will support State-level consumer-run organizations to assist consumers to participate in the development of policies, programs, and quality assurance activities related to the Final Report of the President's New Freedom Commission on Mental Health as it applies to mental health service delivery. Grantees are especially encouraged to utilize training capacity, network development, organizational and community readiness, and policy development to support best practices but are not limited to these specific activities. Examples of the types of community services that grantees will work to improve include State planning boards and councils, individualized plans of care, anti-stigma initiatives, interactions with the criminal justice system, supported employment programs, rights protection, cultural competence, outreach to people in rural areas, people of color and older adults: research on recovery, trauma and medication; evidence based determinations and applications; workforce development; tele-health and other on line supports including personal recovery pages.

Background: The Statewide Consumer Network Grant Program builds on the work of the Federal Community Support Program (CSP). The Center for Mental Health Services has supported the development of accessible, responsive mental health treatment, rehabilitation, and supportive services for people with a serious mental illness through CSP. The mission of CSP is to promote the development of systems of care which help adults with serious mental illness recover, live independently and productively in the community, and avoid inappropriate use of institutions.

CSP helped to establish consumer and family organizations throughout the country. Today, nearly every State has an active consumer organization dedicated to promoting systems of care that are responsive to the needs of people with a serious mental illness. By providing appropriate training and tools in the development of individualized mental health plans, understanding the need and use of accountability and evaluation measures, and the many other self-help, self-management skills, consumers can provide the guidance and foresight into changing the present system to a recover-oriented system for all peers and thereby ensuring the implementation of the goals of the Final Report of the President's New Freedom Commission on Mental Health.

Estimated Funding Available/Number of Awards: It is expected that $1.5 million will be available in FY 2004 to fund approximately 20–22 awards of up to $70,000 per year in total costs (direct and indirect), with a limit of one award per State. It is expected that only Category 1—Small Infrastructure Grant awards, as defined in the INF–04 PA (MOD), will be made. Proposed budgets cannot exceed $70,000 in any year. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. All applicants are reminded that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Eligible Applicants: Eligible applicants are limited to the following, rather than the Eligible Applicants listed in the INF–04 PA (MOD): domestic private, nonprofit entities, including faith-based entities and currently funded Statewide Consumer Network Grantees that (1) are controlled and managed by mental health consumers; (2) are dedicated to the improvement of mental health services statewide; and (3) have a Board of Directors comprised of more than 51 percent consumers. SAMHSA is limiting eligibility to consumer-controlled organizations because the goals of this grant program are: To strengthen the capacity of consumers to act as agents of transformation in influencing the type and amount of services and supports provided to people with a serious mental illness and to ensure that their mental health care is consumer driven. Applicants will be required to complete and sign a Certification of Eligibility and provide necessary supportive documentation. This certification will be provided in the application kit, available from the National Mental Health Information Center, and will also be posted on the SAMHSA Web page along with the NOFA.

Additional information regarding eligibility, including program requirements and formatting requirements, is provided in the INF–04 PA (MOD).

Period of Support: Awards will be made for project periods of up to three years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Is Cost Sharing or Matching Required: No.

Exceptions to the INF–04 PA (MOD) and Other Special Requirements: The following information describes exceptions or limitations to the INF–04 PA (MOD) and provides special requirements that pertain only to the Statewide Consumer Network Grants:

- Review Criteria/Project Narrative—Applicants for Statewide Consumer Networks grants are required to address the following requirements in the Project Narrative of their applications,

in addition to the requirements specified in the INF–04 PA (MOD):

(1) In Section B, applicants must describe how the primary focus of the proposed project will include work to transform the system through specific training and capacity building activities, and network and policy development that reflects the goals of the Final Report of the President's New Freedom Commission on Mental Health.

(2) In Section B, applications must describe the applicant's collaborations with other family and consumer networks, the State Director of Consumer Affairs in the State office of mental health (if applicable), consumers on the State Planning Council, and other disability groups.

(3) In Section C, applicants must describe the applicant's organizational mission and how its scope of work reflects statewide focus on consumers with a serious mental illness and promotes the concepts of consumer self-help; management plan and staffing.

• Performance Measurement—All SAMHSA grantees are required to collect performance data so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). In Section D of their applications, applicants for the Statewide Consumer Networks Program must document their ability to collect and report data on all the following indicators:

• An increase in the number of consumers served; and

• An increase in the number of consumers and family members in planning, policy, and service delivery decisions by (a) having policies in place; and (b) data on consumers and family member participation.

SAMHSA will work with grantees to finalize a standard methodology related to these indicators shortly after award. The data collection tool has not yet been developed. Grantees will be required to report performance data to SAMHSA on an annual basis.

Application and Submission Information: Complete application kits may be obtained from: The National Mental Health Information Center at 1–800–789–2647. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities") and the INF–04 PA (MOD) is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp.*

When submitting an application, be sure to type "SM 04–003, Statewide Consumer Networks" in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Intergovernmental Review: Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O. 12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for complying with E.O. 12372 are provided in the INF–04 PA (MOD). A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for completing the PHSIS are provided in the INF–04 PA (MOD).

Application Review Information: SAMHSA applications are peer-reviewed. For those programs where the individual award is over $100,000, applications must also be reviewed by the Appropriate National Advisory Council. Decisions to fund a grant are based on the strengths and weaknesses of the application as identified by the peer review committee and approved by the National Advisory Council, and the availability of funds. Unless other specified, SAMHSA intends to make not more than one award per organization per funding opportunity in any given fiscal year.

Checklist for Application Formatting Requirements:

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific NOFA and in Section III of the standard grant announcement. Please check the entire NOFA and Section III of the standard grant announcement before preparing your application.

☐ Use the PHS 5161–1 application.

☐ Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

☐ Information provided must be sufficient for review.

☐ Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.

☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for Project Narrative stated in the standard grant announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limit for Appendices stated in the standard grant announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

• The 10 application components required for SAMHSA applications should be included.

These are:

• Face Page (Standard Form 424, which is in PHS 5161–1)
• Abstract
• Table of Contents
• Budget Form (Standard Form 424A, which is in PHS 5161–1)
• Project Narrative and Supporting Documentation
• Appendices
• Assurances (Standard Form 424B, which is in PHS 5161–1)
• Certifications (a form in PHS 5161–1)
• Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
• Checklist (a form in PHS 5161–1)

☐ Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the FY 2004 standard funding announcements.
• Budgetary limitations as specified in Section I, II, and IV–5 of the FY 2004 standard funding announcements.
• Documentation of nonprofit status as required in the PHS 5161–1.

☐ Pages should be typed single-spaced with one column per page.

☐ Pages should not have printing on both sides.

☐ Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

☐ Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or light-weight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Award Administration: Award information, including information about award notices, administrative requirements and reporting requirements, is included in the INF–04 PA (MOD).

FOR FURTHER INFORMATION CONTACT: Risa Fox, SAMHSA/Center for Mental Health Services, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857; 301–443–3653; E-mail: *rfox@samhsa.gov.*

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Planning, Policy and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–4688 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2004 Funding Opportunity

ACTION: Notice of funding availability (NOFA) for Statewide Family Network Grants.

Authority: Section 520 A of the Public Health Service Act, as amended and subject to the availability of funds.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of FY 2004 funds for Statewide Family Network Grants. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.grants.gov.*

For complete instructions, potential applicants must obtain a copy of the revised standard Infrastructure Grants Program Announcement [INF–04 PA (MOD)], and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The INF–04 PA (MOD) describes the general program design and provides instructions for applying for all SAMHSA Infrastructure Grants, including Statewide Family Network Grants. Additional instructions and requirements specific to the Statewide Family Network Grants are described below.

Funding Opportunity Title: Statewide Family Network Grants.

Announcement Type: Modification.

Funding Opportunity Number: SM 04–004.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: April 7, 2004. You will be notified by postal mail that your application has been received.

[**Note:** Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due May 7, 2004.]

Funding Instrument: Grant.

Funding Opportunity Description: This is a republication of the Substance Abuse and Mental Health Services Administration's Notice of Funding Availability SM 04–004. The purpose of this republication is to revise the criteria used to screen out applications from peer review. These revised criteria are consistent with the standard grant announcement for Infrastructure Grants INF–04 PA (MOD).

These revisions can be found in this document, in their entirety, in the section on Eligible Applicants and the Checklist of Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications.

The deadline for applications has been extended to 30 days after the publication of this Notice.

The Statewide Family Networks program is one of SAMHSA's Infrastructure Grants programs. SAMHSA's Infrastructure Grants provide funds to increase the capacity of mental health and/or substance abuse service systems to support programs and services. SAMHSA's Infrastructure Grants are intended for applicants seeking Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health service delivery. Statewide Family Network Grants are intended for applicants seeking Federal support to act as "Agents of Transformation" in developing or enhancing their service system infrastructure in order to support effective substance abuse and/or mental health service delivery which is consumer and family driven. The Statewide Family Network Program is a critical part of the SAMHSA/CMHS effort to implement the President's New Freedom Commission on Mental Health Report.

The purpose of the Statewide Family Networks program is to enhance State capacity and infrastructure to be more

oriented to the needs of children and adolescents with serious emotional disturbances and their families. The programs goals are to: (1) Strengthen organizational relationships; (2) foster leadership and business management skills among families of children and adolescents with serious emotional disturbance; and (3) identify and address the technical assistance needs of children and adolescents with serious emotional disturbances and their families. To achieve this goal, the program assists family members around the country to work with policy makers and service providers to improve services for children and adolescents with serious emotional disturbances and their families. The Statewide Family Networks Program is designed to ensure that families are the catalysts for transforming the mental health and related systems in their State by strengthening coalitions among family members, and between family members and policymakers and service providers, recognizing that family members are the best and most effective change agents.

Background: The Statewide Family Network Program builds on the work of The Child, Adolescent and Services Systems Program (CASSP), which helped to establish a child and family focus in programs serving children and adolescents with serious emotional disturbances around the county. Today, nearly every State has active family organizations dedicated to promoting systems of care that are responsive to the needs of children and adolescents with serious emotional disturbances and their families. Although significant progress has been made, further support will ensure self-sufficient, empowered networks that will effectively participate in State and local mental health services planning and health care reform activities related to improving community-based services for children and adolescents with serious emotional disturbances and their families.

Estimated Funding Available/Number of Awards: It is expected that $2.8 million will be available to fund 43 awards in FY 2004, with a limit of one award per State. Only Category 1-Small Infrastructure Grant awards, as defined in the INF–04 PA (MOD), will be made. In general, these Category 1 awards are expected to be up to $60,000 per year in total costs (direct and indirect). Up to 22 grantees with projects that include a youth leadership component may receive an additional $10,000 per year. Proposed budgets for applications without a youth leadership component cannot exceed $60,000 in any year. Proposed budgets for applications with a youth leadership component cannot exceed $70,000 in any year. The actual amount available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. All applicants are reminded that we cannot guarantee that sufficient funds will be appropriated to permit SAMHSA to fund any applications.

Period of Support: Awards will be made for project periods of up to three years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Eligible Applicants: Eligible applicants are limited to the following, rather than the Eligible Applicants listed in the INF–04 PA (MOD): domestic private, nonprofit entities, including faith-based entities, tribal family organizations, and currently funded Statewide Family Networks grantees that: (1) Are controlled and managed by family members; (2) are dedicated to the improvement of mental health services statewide; and (3) have a Board of Directors comprised of no less than 51 percent family members. SAMHSA is limiting eligibility to family-controlled organizations because the goals of this grant program are to: strengthen the capacity of families to act as agents of transformation in influencing the type and amount of services provided to them and to their children who have a serious emotional disturbance and to ensure that their mental health care is consumer and family driven. Applicants will be required to complete and sign a Certification of Eligibility and provide necessary supportive documentation. This certification will be provided in the application kit, available from the National Mental Health Information Center, and will also be posted on the SAMHSA Web page along with the NOFA. Additional information regarding eligibility, including program requirements and formatting requirements, is provided in the INF–04 PA (MOD).

Is Cost Sharing or Matching Required: No.

Exceptions to the INF–04 PA (MOD) and Other Special Requirements: The following information describes exceptions or limitations to the INF–04 PA (MOD) and provides special requirements that pertain only to the Statewide Family Network Grants:

• *Review Criteria/Project Narrative*—Applicants for Statewide Family Networks grants are required to address the following requirements in the Project Narrative of their applications, in addition to the requirements specified in the INF–04 PA (MOD):

(1) In Section B, applicants must describe how the primary focus of the proposed project will be on training capacity, network development (*i.e.*, with other consumer and family organizations), organizational and community readiness, and policy development to support best practices.

(2) In Section B, applicants must describe the applicant's collaborations with other family and consumer networks, the State Director of Consumer Affairs (if applicable), family representatives on the State Planning Council, and other disability groups.

(3) In Section C, applicants must describe the applicant's organizational mission and how its scope of work reflects statewide focus on families who have children, youth and adolescents up to age 18 with a serious emotional, behavior or mental disorder and are currently receiving services, or up to age 25 with a serious emotional, behavior or mental disorder and are receiving transitional services from children to adult services.

(4) In Section C, applicants must describe the extent to which the applicant's Board of Directors includes family members whose children up to age 18 with a serious emotional, behavior or mental disorder and are currently receiving services, or up to age 25 with a serious emotional, behavior or mental disorder and are receiving transitional services from children to adult services.

(5) Applicants must clearly indicate in their applications whether or not a youth leadership component is included in the proposed project. Applicants that include a youth leadership component must include relevant information about the youth leadership component in *all* sections of the Project Narrative and Supporting Documentation. For example, Section A must address the need for a youth leadership component in the State where the project will be located, Section B must include a description of the proposed approach for implementing a youth leadership component, Section C must include a description of the staff, management and related experience for the youth leadership component, and Section D must include a description of evaluation and data activities for the youth leadership component. The budget for the youth leadership component provided in Section E must be separately justified and may not exceed $10,000.

Performance Measurement—All SAMHSA grantees are required to collect performance data so that

SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). In Section D of their applications, applicants for the Statewide Family Networks program must document their ability to collect and report data on the following indicators:

- An increase of families served; and
- An increase in the number of grantees that demonstrate inclusion of consumers [adolescents and young adults transitioning to adult services] and family members in planning, policy, and service delivery decisions through (a) having policies in place; and (b) data on consumers [adolescents and young adults transitioning to adult services] and family member participation.

SAMHSA will work with grantees to finalize a standard methodology related to these indicators shortly after award. The data collection tool is yet to be developed. Grantees will be required to report performance data to SAMHSA on an annual basis.

Application and Submission Information: Complete application kits may be obtained from: the National Mental Health Information Center at 1–800–789–2647. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities") and the INF–04 PA (MOD) is available electronically at *http://www.samhsa.gov/grants/2004/standard/Infrastructure/index.asp.*

When submitting an application, be sure to type "SM 04–004, Statewide Family Networks" in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Intergovernmental Review: Applicants for this funding opportunity must comply with Executive Order 12372 (E.O. 12372). E.O.12372, as implemented through Department of Health and Human Services regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. Grantees must comply with the requirements of E.O. 12372. Instructions for complying with E.O. 12372 are provided in the INF–04 PA (MOD). A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *http://www.whitehouse.gov/omb/grants/spoc.html.*

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for completing the PHSIS are provided in the INF–04 PA (MOD).

Application Review Information: SAMHSA applications are peer-reviewed. For those programs where the individual award is over $100,000, applications must also be reviewed by the Appropriate National Advisory Council. Decisions to fund a grant are based on the strengths and weaknesses of the application as identified by the peer review committee and approved by the National Advisory Council, and the availability of funds. Unless other specified, SAMHSA intends to make not more than one award per organization per funding opportunity in any given fiscal year.

Checklist for Application Formatting Requirements

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific NOFA and in Section III of the standard grant announcement. Please check the entire NOFA and Section III of the standard grant announcement before preparing your application.

☐ Use the PHS 5161–1 application.

☐ Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

☐ Information provided must be sufficient for review.

☐ Text must be legible.

- Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
- Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.

☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

- Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for Project Narrative stated in the standard grant announcement.
- Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.
- Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limit for Appendices stated in the standard grant announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

— The 10 application components required for SAMHSA applications should be included. These are:

- Face Page (Standard Form 424, which is in PHS 5161–1)
- Abstract
- Table of Contents
- Budget Form (Standard Form 424A, which is in PHS 5161–1)

- Project Narrative and Supporting Documentation
- Appendices
- Assurances (Standard Form 424B, which is in PHS 5161–1)
- Certifications (a form in PHS 5161–1)
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
- Checklist (a form in PHS 5161–1)

—Applications should comply with the following requirements:

- Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the FY 2004 standard funding announcements.
- Budgetary limitations as specified in Section I, II, and IV–5 of the FY 2004 standard funding announcements.
- Documentation of nonprofit status as required in the PHS 5161–1.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or light-weight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Award Administration: Award information, including information about award notices, administrative requirements and reporting requirements, is included in the INF–04 PA (MOD).

For Further Information Contact: Elizabeth Sweet, SAMHSA/CMHS, Child, Adolescent and Family Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 11C–16, Rockville, MD 20857; 301–443–1333; E-mail: *esweet@samhsa.gov.*

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–4689 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1510–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1510–DR), dated February 19, 2004, and related determinations.

EFFECTIVE DATE: February 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 19, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oregon, resulting from severe winter storms on December 26, 2003, through January 14, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William M. Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Baker, Benton, Clackamas, Clatsop, Columbia, Deschutes, Douglas, Gilliam, Hood River, Jefferson, Lake, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, and Yamhill Counties for Public Assistance.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–5090 Filed 3–5–04; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; NEPA Compliance Checklist

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) has submitted the

collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: You must submit comments by April 7, 2004.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358–2445, or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We have submitted a request to OMB to renew its approval of the collection of information for the NEPA Compliance Checklist. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0110.

The Service administers several grant programs authorized by the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i), the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), the Anadromous Fish Conservation Act (16 U.S.C. 757a–757g), the Endangered Species Act (7 U.S.C. 136), the Clean Vessel Act (33 U.S.C. 1322), the Sportfishing and Boating Safety Act (16 U.S.C. 777g), North American Wetlands Conservation Act (16 U.S.C. 4401–4412), the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3951 *et seq.*), and through other Acts and authorities. The Service uses the information collected on the NEPA Compliance Checklist to determine whether a grantee complies with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347, 40 CRF 1500–1508). The State or other grantee uses the checklist as a guide to general NEPA requirements, and the checklist becomes an administrative record to meet their assurances requirements for receiving a grant.

Certain grant applicants must provide the information requested on the NEPA Compliance Checklist in order to qualify to receive benefits in the form of grants for purposes outlined in the applicable law. This form is designed to cause the minimum impact in the form of hourly burden on respondents and still obtain all necessary information. Only about 3 percent of the Service's applicants for either a new grant or for an amendment to an existing grant will meet the criteria and need to complete the NEPA Compliance Checklist. The checklist needs to be prepared when: (a) The proposed action is not completely covered by a categorical exclusion (*e.g.*, the proposal cannot meet the qualifying criteria in the categorical exclusion, and "is not" will be checked on the Checklist); (b) The proposed action cannot be categorically excluded because an exception to the categorical exclusion applies (*e.g.*, a "Yes" will be checked on the Checklist); (c) Environmental conditions at or in the vicinity of the site have materially changed, affecting the consideration of alternatives and impacts (applicable to amendments and renewals); (d) There is a need to document a normally categorically excluded action that may be controversial; or (e) Additional internal review and/or documentation of the NEPA administrative record are desirable.

We are proposing several changes to the NEPA Compliance Checklist to make the checklist easier to understand and easier for the respondent to complete and to update the checklist based on revisions to our Departmental Manual.

Title: NEPA Compliance Checklist.

OMB Control Number: 1018–0110.

Form Number: 3–2185.

Frequency of Collection: Annually.

Description of Respondents: The 50 U.S. States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

Total Annual Burden Hours

Form name	Completion time per form	Annual number of responses	Annual hour burden
Checklist	½ hour	160	80

We again invite comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 2, 2004.

Anissa Craghead,

Information Collection Officer.

[FR Doc. 04–5142 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0093, Applications for Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (we) has submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before April 7, 2004.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB-OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22203; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead, Information Collection Clearance Officer, at 703–358–2445 or electronically at *Anissa_Craghead@fws.gov*, or Amy Brisendine at 703–358–2104 ext. 2441, electronically at *Amy_Brisendine@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities (*see* 5 CFR 1320.8(d)). We have submitted a request to OMB to renew its approval of the collection of information for: (1) The Service's license/permit application form numbers 3–200–19 through 3–200–25 and 3–200–27 through 3–200–53, which are all currently approved under OMB control number 1018–0093; (2) the placement of Service form 3–200–26, which is currently approved under OMB control number 1018–0092, under OMB control number 1018–0093; (3) the addition of forms 3–200–58, 3–200–64 through 3–200–66, and 3–200–73; and (4) the deletion of form 3–200–38. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the March 31, 2003, **Federal Register** (68 FR 15474) inviting public comment. Comments were received from the American Zoo and Aquarium Association (AZA). Many of their comments and suggestions were incorporated into the forms. This notice provides an additional 30 days in which to comment on the information collection.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB number. The OMB control number for this collection is 1018–0093.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Lacey Act (16 U.S.C. 3371 *et seq.*), the Bald and Golden Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (27 U.S.T. 1087), the Marine Mammal Protection Act (16 U.S.C. 1361–1407 *et seq.*), and the Wild Bird Conservation Act (16 U.S.C. 4901–4916 *et seq.*), and are contained in Service regulations in chapter I, subchapter B of title 50 Code of Federal Regulations (CFR) parts 15, 16, 17, and 23. Common permit applications and record keeping requirements have been consolidated in 50 CFR part 13, and unique requirements of the various statutes in the applicable part.

OMB Control Number: 1018–0093.

Service Form Numbers: 3–200–19 through 3–200–37, 3–200–39 through 3–200–53, 3–200–58, 3–200–64 through 3–200–66, and 3–200–73.

Frequency of Collection: On occasion.

Description of Respondents: Individuals, biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, scientists, antique dealers, exotic pet industry, hunters, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers, and local, State, tribal and Federal governments.

Total Annual Responses: 9,307.

Total Annual Burden Hours: 6,746.

Total Annual Non-Hour Dollar Cost Burden: $955,625.

We again invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552 (a)).

Dated: March 2, 2004.

Anissa Craghead,

Service Information Collection Officer.

[FR Doc. 04–5143 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–4310–ET; GPO–04–0002; IDI–34424]

Notice of Public Meetings for a Caribou-Targhee National Forest Proposed Withdrawal; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the time and place for three public meetings to be held in conjunction with the Caribou-Targhee National Forest's proposed withdrawal of 7,131,56 acres to protect and preserve the Yellowstone Cutthroat trout and the area's historic mining features.

DATES: Public meetings will be held on Tuesday, April 27, 2004 in Afton, Wyoming at the Grays River Ranger District Office located at 125 Washington Street; Wednesday, April 28, 2004 at the Soda Springs Ranger District Office conference room, located at 410 East Hooper Avenue, Soda Springs, Idaho; and Thursday, April 29, 2004 in the Caribou-Targhee National Forest Supervisor's Office conference room, 1405 Hillipark Drive, Idaho Falls, Idaho. All three meetings will be held from 6 p.m. to 9 p.m. mountain standard time.

ADDRESSES: All persons who wish to submit comments in connection with the proposed withdrawal should do so in writing and send them to the Idaho State Director, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise,

Idaho 83709, 208–373–3867, or Steve Robison, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, 208–236–7573.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal was published in the **Federal Register** on May 23, 2003, (68 FR 28251–28252). Notice is hereby given that three public meetings as provided for by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, (2000) will be held at the dates and times specified above.

All persons who wish to submit comments in connection with the proposed withdrawal may present their views in writing at the public meeting or to the Idaho State Director of the Bureau of Land Management at the address above within 30 days after the public meetings. A complete legal description is available from the Idaho State Office at the address shown above or at the Caribou-Targhee National Forest office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Public scoping, as part of the environmental analysis process required by the National Environmental Policy Act of 1969, will be conducted concurrently at the meetings.

The withdrawal will continue to be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Jimmie Buxton,

Branch Chief for Lands and Minerals.

[FR Doc. 04–5096 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–04–1430–ES; CACA–13189]

Termination of a Recreation and Public Purposes (R&PP) Classification and an Order Providing for Opening of Land; California

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Order.

SUMMARY: This order terminates a BLM R&PP classification affecting 240 acres of public land near Lucerne Valley, California. Termination of the classification will open the land to the public land laws generally, including the mining laws. The land has been and remains open to mineral leasing.

DATES: The termination/opening order is effective April 7, 2004.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

FOR FURTHER INFORMATION CONTACT: Richard Rotte, Realty Specialist, at the address above or by telephone at (760) 252–6026.

SUPPLEMENTARY INFORMATION: The land is described as follows:

San Bernardino Meridian, California

T. 4 N., R. 2 E.,
Sec. 18: E½SE¼;
Sec. 22: NE¼;

The area described contains 240 acres in San Bernardino County, California.

By virtue of the authority vested in the Secretary of the Interior by the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), it is ordered as follows:

1. Pursuant to the regulations in 43 CFR 2091.7–1(b)(1) and the authority delegated by BLM Manual Section 1203 (43 FR 85), the classification decision of July 15, 1983, which classified 280 acres of public land as suitable for recreation and public purposes under the Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), under Serial Number CACA13189, that 240 acre portion which was not patented is hereby revoked.

2. At 8 a.m. on April 7, 2004, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid application received at or prior to 8 am on April 7, 2004, shall be considered as simultaneous filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 8 a.m. on April 7, 2004, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights; the provisions of existing withdrawals; other segregations of record; and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. State law governs acts required to establish a location and to initiate a right of possession where not in conflict with Federal law. BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 12, 2004.

Harold E. Johnson,

Acting Field Manager, Barstow Field Office.

[FR Doc. 04–5095 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–076–1220–BA]

Notice of Closure to Off-Highway Vehicle Use in the Bennett Hills

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice to the public of closure on public lands administered by the Bureau of Land Management, Shoshone Field Office, Idaho.

SUMMARY: Notice is hereby given of the issuance of an emergency motorized closure in the Bennett Hills. Certain lands administered by the Bureau of Land Management (BLM) Shoshone Field Office are closed to off-highway vehicle (OHV) use and over-the-snow vehicles, with the exception of designated routes. A description of the closed area is provided below. The closure will remain in effect until such time as the authorized officer of the Shoshone Field Office determines the closure may be lifted, after the snowmelts in the spring and designated roads are dry. The closure is in accordance with 43 CFR 8364.1.

FOR FURTHER INFORMATION CONTACT: The BLM Shoshone Field Office, 400 West F. Street, Shoshone, ID 83352, telephone: (208) 732–7200.

SUPPLEMENTARY INFORMATION: An emergency motorized closure has gone into effect in the Bennett Hills. The motorized closure area consists of all BLM administered land within King Hill creek on the west, below 5,000 feet elevation on the north, Highway 93 on the east, and Highway 26 on the south. Designated routes that remain are identified on a detailed map available at the Shoshone Field Office. The BLM Shoshone Field Office coordinated with the Idaho Department of Fish and Game to identify crucial big game winter range that is now closed to motorized travel. Due to the harsh winter and deep snow pack, big game are congregating on historic winter range areas and experiencing additional stress. Throughout the Bennett Hills, motorized travel, including snowmobiles, is restricted to designated routes and county roads which enable motorized access to higher elevation areas, above 5,000 feet. These upper elevation areas are typically not used by big game animals in the winter and therefore can still be accessed and remain open to over-the-snow vehicles. The BLM advises public land users to avoid wildlife if encountered in these open areas.

The area of the closure includes BLM lands, specifically described wholly or partially:

Boise Meridian

T. 3 S., to T. 5 S and R. 11 E., to R. 18 E. The motorized closure area consists of all BLM administered land within these boundaries: King Hill creek on the west, below 5,000 feet elevation on the north, Highway 93 on the east, and Highway 26 on the south.

Detailed maps of the area closed to OHV and recreational use are available at the Shoshone Field Office at the address above.

Dated: January 13, 2004.

Bill Baker,

Shoshone Field Manager.

[FR Doc. 04–5093 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–03–1430–ES; AZA–31954]

Notice of Realty Action; Recreation and Public Purposes Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The public land listed below, located in Coconino County, Arizona, near the community of Fredonia has been examined and found suitable for classification for lease or conveyance to the town of Fredonia under the provisions of the Recreation and Public Purposes Act.

FOR FURTHER INFORMATION CONTACT: You may contact Linda Barwick, on (435) 688–3287.

SUPPLEMENTARY INFORMATION: The following public land, located in Coconino County, Arizona, near the community of Fredonia has been examined and found suitable for classification for lease or conveyance to the town of Fredonia under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et. seq.*):

Gila and Salt River Meridian, Arizona

T. 41 N., R. 2 W.,
Sec. 22, W½NW¼NE¼NE¼; NW¼S W¼SW¼NE¼NE¼; N½NW¼NE¼; N½ S½NW¼NE¼; N½ NE¼NW¼; N½S½ NE¼NW¼.

Containing 65.625 acres, more or less.

The town of Fredonia proposes to use the land to construct, operate and maintain a shooting range. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States.

4. Any other valid and existing rights of record not yet identified.

The land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws, except for leasing or conveyance under the Recreation and Public Purposes Act on March 8, 2004. For a period until April 22, 2004, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Field Manager, Arizona Strip Field Office Bureau of Land Management, Arizona Strip Field Office, 345 E. Riverside Drive, St. George, UT 84790.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a shooting range facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective May 7, 2004.

SUPPLEMENTARY INFORMATION: A plan of development for the shooting range is on file in the Arizona Strip Field Office.

Roger G. Taylor,

Field Manager.

[FR Doc. 04–5089 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–4–1430–ES]

Realty Action; Recreation and Public Purpose Act Classification; Benzie County, MI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes Act (R&PP) Classification; Michigan.

SUMMARY: The following public lands near the community of Frankfort in Benzie County, Michigan have been examined and found suitable for classification for lease or conveyance to Benzie County, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with Section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

Michigan Meridian

T. 26 N., R. 16 W.
Lot 10 and Lot 12, Section 4.

The area described contains 4.05 acres in Benzie County

Benzie County proposes to manage the lands as a historic site. This action classifies the lands identified above for disposal through the R&PP Act of 1926 (43 U.S.C. 869 *et seq.*) to protect the historic lighthouse, lighthouse related structures and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Paul J. Salvatore, Realty Specialist, Bureau of Land Management (BLM), Milwaukee Field Office, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202, (414) 297–4413.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order dated July 24, 1875, a parcel of public land totaling 9.52

acres located in Benzie County was reserved for lighthouse purposes. The parcel contained the Point Betsie Light Station located on the eastern shore of Lake Michigan near the city of Frankfort. The original parcel has subsequently been resurveyed and divided into three (3) separate lots: Lot 10—1.70 acres, Lot 11—3.52 acres and Lot 12—2.35 acres.

The Department of Transportation, United States Coast Guard, submitted a Notice of Intent (NOI) to relinquish custody, accountability and control of Lot 10 on January 6, 1984. A second NOI to relinquish custody, accountability and control was submitted for Lot 12 on August 12, 1998. The BLM has recommended that Lot 10 and Lot 12 be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order partially revoking the Executive Order. Public land order 7249 dated March 18, 1997, returned Lot 10 to its former status as public land. A proposed public land order to return Lot 12 to its former status as public land currently is pending and awaiting action within the Department.

Benzie County has applied for patent to the land under the R&PP Act of 1926.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Terms and conditions identified through the site-specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days after issuance of this notice, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 626 East Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202.

Classification Comments: Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for management as a historic site, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for management as a historic site.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: January 20, 2004.

Chris E. Hanson,

Acting Milwaukee Field Manager.

[FR Doc. 04–5097 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–PN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–1430–01; NMNM 108654]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification, San Juan County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public lands in San Juan County, New Mexico have been examined and found suitable for classification for lease or conveyance to the City of Farmington under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). City of Farmington proposes to use the land for a neighborhood park.

DATES: Interested parties may submit comments regarding the proposed leasing/conveyance or classification of the lands to the Bureau of Land Management at the following address until April 22, 2004. The Bureau of Land Management, Farmington Field Manager, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401 who may sustain, vacate, or modify this realty action, will review any adverse comments. In the absence of any adverse comments, this realty action becomes the final determination of the Department of the Interior and effective on May 7, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Ollom, Realty Specialist, at the Bureau of Land Management, Farmington Field Office, (505) 599–8914. Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: The City of Farmington has proposed to use the land for a neighborhood park.

New Mexico Principal Meridian

T. 29 N., R. 14 W.
Sec. 11, lots 1 and 3.
Containing 10.09 acres, more or less.

Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period until March 8, 2006. The segregative effect will terminate upon issuance of the patent to City of Farmington, or March 8, 2006, whichever occurs first.

The lease, when issued, will be subject to the following terms:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901–6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

3. Provisions of Title VI of the Civil Rights Act of 1964.

4. Provisions that the lease be operated in compliance with the approved Development Plan.

The patent, when issued, will be subject to the following terms:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of all minerals.

3. All valid existing rights, *e.g.* rights-of-way and leases of record.

4. Provisions that if the patentee or its successor attempts to transfer title to or

control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

Leasing and patenting is consistent with current Bureau of Land Management policies and land use planning. The proposal serves the public interest since it would provide a neighborhood park for the surrounding public use.

Dated: October 23, 2003.

Joel E. Farrell,

Acting Field Office Manager.

[FR Doc. 04–5098 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–100–1220–AF]

Final Supplementary Rules for the Lower Blackfoot River Corridor; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules for recreation use of public lands along the Blackfoot River and McNamara Road, Missoula County, Montana.

SUMMARY: This notice contains final supplementary rules incorporating restrictions on recreation use on public lands located within one-quarter mile on either side of the Blackfoot River and/or McNamara Road extending from Johnsrud Park upstream for approximately 10 miles. The final supplementary rules are necessary to address resource protection needs identified in the Lower Blackfoot Corridor Environmental Assessment, MT–100–00–02.

EFFECTIVE DATE: The final rules are effective on April 7, 2004.

ADDRESSES: Field Manager, Bureau of Land Management, Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804. You may also contact the BLM by internet e-mail at the following address: *MT_Missoula_FO@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana 59804, (406) 329–3914.

SUPPLEMENTARY INFORMATION:

I. Comments

No comments received.

II. Background

The Blackfoot River Recreation Corridor is a multi-cooperative partnership consisting of private landowners, Montana Department of Fish, Wildlife and Parks, and the Bureau of Land Management (BLM). This partnership was established in the 1970s to provide protection of natural resources and private property and to provide public safety along 26 miles of free flowing Blackfoot River.

In its June 1997 Lower Blackfoot River Assembled Land Exchange Environmental Assessment (MT–074–07–06), the BLM stated that "recreation along the Blackfoot River would continue to be managed under the existing Blackfoot River Recreation Corridor Landowner's Agreement."

In 1998, the BLM began acquiring land within the corridor. The BLM now manages approximately 12,000 acres of land upstream from Johnsrud Park.

Since 1999, the BLM has managed this area under an interim restriction order (43 CFR 8364.1 (d). This order contains prohibited acts related to camping, motor vehicle use, public safety, and resource protection.

In 2001, the BLM completed the Lower Blackfoot Corridor Environmental Assessment. You may obtain the Environmental Assessment, upon which these supplementary rules are based, from the Missoula Field Office.

The lands affected by these rules are public lands in Missoula County, Montana, in the following sections:

T. 14 N., R. 15 W., Secs. 18 and 19.
T. 13 N., R. 16 W., Secs. 4, 5, and 6.
T. 14 N., R. 16 W., Secs. 13 and 14, 20 to 29, inclusive, 32 and 33.

III. Discussion of Supplementary Rules

Implementing these supplementary rules will establish consistency with the existing Montana Department of Fish, Wildlife and Parks' Blackfoot River Recreation Corridor rules. The supplementary rules are consistent with the interim restriction order and are supported by the Lower Blackfoot Corridor Environmental Assessment MT–100–00–02. BLM is finalizing these supplementary rules under the authority of 43 CFR 8365.1–6.

IV. Procedural Matters: Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules would not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. These supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) and has found that the supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Montana. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific

public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business, commercial or industrial, use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules would not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year; nor would these supplementary rules have a significant or unique effect on state, local or tribal governments or the private sector. The supplementary rules would not require anything of state, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules would affect land in only one state, Montana, and do not address jurisdictional issues involving the state government. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 3175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these supplementary rules do not include policies that have tribal implications. The supplementary rules contain only rules of conduct for recreation use of certain public lands managed by BLM.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Author

The principal author of these supplementary rules is BLM Ranger Anthony Lue of the Missoula Field Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

Under the authority of 43 CFR 8365.1–6, BLM issues the following supplementary rules on public lands of the Blackfoot River Corridor one-quarter mile on either side of the Blackfoot River and/or McNamara Road.

Sec. 1 Prohibited Acts

On public lands in Secs. 18 and 19, T. 14 N., R. 15 W., Secs. 4, 5, and 6, T. 13 N., R. 16 W., and Secs. 13 and 14, 20 to 29, inclusive, 32 and 33, T. 14 N., R. 16 W., Principal Meridian, Montana, that are within one-quarter mile on either side of the Blackfoot River or McNamara Road, or both, you must not:

a. Camp outside of designated sites or areas.

b. Light or maintain a fire except in designated areas or established by government fire rings.

c. Operate a motor vehicle off a designated trail, road or route.

d. Collect firewood for other than on-site use. You may burn only dead and down wood.

e. Discharge a firearm or projectile (except for legal game hunting purposes as established by the Montana Department of Fish, Wildlife and Parks), or engage in other recreational shooting including, but not limited to, plinking, target shooting, or shooting varmints, etc.

f. Use of a firework.

g. Violate a posted regulation pertaining to the protection of natural resources or public safety.

h. Occupy or camp at an area longer than 7 days during any 30-day period.

Sec. 2 Exemptions From the Supplementary Rules

Persons who are exempt from these supplementary rules include any Federal, state, or local officer, and members of any organized search and rescue team or firefighting force in performance of an official duty, BLM employees on official administrative business, and any person authorized by the BLM.

Sec. 3 Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within the boundaries established in the rules may be tried before a United States Magistrate and fined no more than $1000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: January 30, 2004.

Martin C. Ott,

State Director, Montana State Office.

[FR Doc. 04–5094 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0106).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under "30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities."

DATES: Submit written comments by May 7, 2004.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the e-mail address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0106" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities.

OMB Control Number: 1010–0106.

Abstract: Title I of the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), as amended by the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), provides at section 1016 that oil spill financial responsibility (OSFR) for offshore facilities be established and maintained according to methods determined acceptable to the President. Section 1016 of OPA supersedes the offshore facility OSFR provisions of the Outer Continental Shelf Lands Act Amendments of 1978. These authorities and responsibilities are among those delegated to MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. This information collection request addresses the regulations at 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities, and the associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

The MMS will use the information collected under 30 CFR part 253 to verify compliance with section 1016 of OPA. The information is necessary to confirm that applicants can pay for cleanup and damages from oil-spill discharges from covered offshore facilities (COFs). Routinely, the information will be used: (a) To establish eligibility of applicants for an OSFR Certification; and (b) as a reference source for clean-up and damage claims associated with oil-spill discharges from COFs; the names, addresses, and telephone numbers of owners, operators, and guarantors; designated U.S. agents for service of process; and persons to contact. To collect most of the information, MMS developed standard forms. The forms and their purposes are:

Form MMS–1016, Designated Applicant Information Certification: The designated applicant uses this form to provide identifying information (company legal name, address, contact name and title, telephone numbers) and to summarize the OSFR evidence. This form is required for each new OSFR Certification application.

Form MMS–1017, Designation of Applicant: When there is more than one responsible party for a COF, they must select a designated applicant. Each responsible party, as defined in the regulations, must use this form to notify MMS of the designated applicant. This form is also used to designate the U.S. agent for service of process for the responsible party(ies) should claims from an oil-spill discharge exceed the amount evidenced by the designated applicant; identifies and provides pertinent information about the responsible party(ies); and lists the covered offshore facilities for which the designated applicant is responsible for OSFR certification. The form identifies each COF by State or OCS region; lease, permit, right of use and easement, or pipeline number; aliquot section; area name; and block number. This form must be submitted with each new OSFRC application in which there is at least one responsible party who is not the designated applicant for a COF.

Form MMS–1018, Self-insurance or Indemnity Information: This form is used if the designated applicant is self-insuring or using an indemnity as OSFR evidence. As appropriate, either the designated applicant or the designated applicant's indemnitor completes the form to indicate the amount of OSFR coverage and effective and expiration dates. The form also provides pertinent information about the self-insurer or indemnitor and is used to designate a U.S. agent for service of process for claims up to the evidenced amount. This form must be submitted each time new evidence of OSFR is submitted using either self-insurance or an indemnity.

Form MMS–1019, Insurance Certificate: The designated applicant (representing himself as a direct purchaser of insurance) or his insurance agent or broker and the named insurers complete this form to provide OSFR evidence using insurance. The number of forms to be submitted will depend upon the amount of OSFR required and the number of layers of insurance to evidence the total amount of OSFR required. One form is required for each layer of insurance. The form provides pertinent information about the insurer(s) and designates a U.S. agent for service of process. This form must be submitted at the beginning of the term of the insurance coverage for the designated applicant's COFs.

Form MMS–1020, Surety Bond: Each bonding company that issues a surety bond for the designated applicant must complete this form indicating the amount of surety and effective dates. The form provides pertinent information about the bonding company and designates a U.S. agent for service of process for the amount evidenced by the surety bond. This form must be submitted at the beginning of the term of the surety bond for the named designated applicant.

Form MMS–1021, Covered Offshore Facilities: The designated applicant submits this form to identify the COFs to which the OSFR evidence applies. The form identifies each COF by State or OCS region; lease, permit, right of use and easement, or pipeline number; aliquot section; area name; block number; and potential worst case oil-spill discharge. This form is required to be submitted with each new OSFR Certification application which includes COFs.

Form MMS–1022, Covered Offshore Facility Changes: During the term of the issued OSFR Certification, the designated applicant submits changes to the current COF listings on this form, including changes to the worst case oil-spill discharge for a COF. This form must be submitted when identified changes occur during the term of an OSFR Certification.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency of submission will vary, but most will respond at least once per year.

Estimated Number and Description of Respondents: Some respondents are approximately 600 holders of leases, permits, and rights of use and easement in the OCS and in State coastal waters who will appoint approximately 200 designated applicants. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. There are no recordkeeping requirements associated with this collection.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is a total of 19,504 hours. The following chart details the individual components of this burden and estimated burden per response or record. In calculating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 253	Reporting requirement	Hour burden per response
Subpart B: 11(a)(1); Subpart D: 40; 41.	Form MMS–1016—Designated Applicant Information Certification	1
Subpart B: 11(a)(1); Subpart D: 40; 41.	Form MMS–1017—Designation of Applicant	9
Subpart C: 21; 22; 23; 24; 26; 27; 30; Subpart D: 40; 41.	Form MMS–1018—Self-Insurance or Indemnity Information	1
Subpart C: 29; Subpart D: 40; 41	Form MMS–1019—Insurance Certificate	120
Subpart C: 31; Subpart D: 40; 41	Form MMS–1020 Surety Bond	24
Subpart D: 40; 41	Form MMS–1021—Covered Offshore Facilities	3
Subpart D: 40; 41; 42	Form MMS–1022—Covered Offshore Facility Changes	1
Subpart B: 12	Request for determination of OSFR applicability	2
Subpart B: 15	Notice of change in ability to comply	1
Subpart B: 15(f)	Provide claimant written explanation of denial	1
Subpart C: 32	Proposal for alternative method to evidence OSFR (anticipate no proposals, but the regs provide the opportunity).	120
Subpart F	Claims: MMS will not be involved in the claims process. Assessment of the burden for claims against the Oil Spill Liability Trust Fund (30 CFR parts 135, 136, 137) should be responsibility of the U.S. Coast Guard.	
Subpart F: 60	Claimant request to determine whether a guarantor may be liable for a claim	2
1–62	General departure and alternative compliance requests not specifically covered elsewhere in 30 CFR 253.	1

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: March 1, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–5047 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0120).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of

1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR Part 206, Subparts F—Federal Coal and J—Indian Coal, Part 210, Subpart E—Solid Minerals, General, and Part 218, Subpart E—Solid Minerals—General, Solid Minerals Compliance and Management Process (Form MMS–4430, Solid Minerals Production and Royalty Report)."

DATES: Submit written comments on or before May 7, 2004.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781 or email *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 206, Subparts F—Federal Coal and J—Indian Coal, Part 210, Subpart E—Solid Minerals, General, and Part 218, Subpart E—Solid Minerals—General, Solid Minerals Compliance and Management Process (Form MMS–4430, Solid Minerals Production and Royalty Report).

OMB Control Number: 1010–0120.

Bureau Form Number: Form MMS–4430.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The information collection request 1010–0120 provides for the collection of solid minerals information. The lessees, operators, or other directly-involved persons described at 30 U.S.C. 1713 are required to make reports and provide reasonable information as defined by the Secretary regarding solid minerals production. Other citations supporting the reporting requirement include 30 U.S.C. 189 pertaining to Public Lands, 30 U.S.C. 359 pertaining to Acquired Lands, 25 U.S.C. 396d pertaining to Indian Lands, and 43 U.S.C. 1334 pertaining to Outer Continental Shelf Lands.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure the royalties are paid appropriately.

Specific lease language varies; however, respondents agree by the lease terms to furnish statements providing the details of all operations conducted on a lease and the quantity and quality of all production from the lease at such times and in such form as the Secretary may prescribe. Currently, rules require respondents to provide accurate, complete, and timely reports for all minerals produced, in the manner and form prescribed by MMS in 30 CFR part 206, subparts F and J; part 210, subpart E, and part 218, subpart E.

Minerals produced from Federal and Indian leases vary greatly in the nature of occurrence, production and processing methods, and markets served. Also, lease terms, statutory requirements, and regulations vary significantly among the different solid minerals. MMS exercises flexibility in the types of data required to meet the compliance and management process strategy. The current requirements provide MMS with the ability to verify that revenue due the government has been paid correctly under applicable laws, regulations, and lease terms. MMS collects solid minerals production and royalty data on Form MMS–4430, Solid Minerals Production and Royalty Report, along with sales summaries, facility data, and sales contracts.

Submission of this information is mandatory. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from "Solid Minerals Compliance and Management Process" to "30 CFR Part 206, Subparts F—Federal Coal and J—Indian Coal, Part 210, Subpart E—Solid Minerals, General, and Part 218, Subpart E—Solid Minerals—General, Solid Minerals Compliance and Management Process (Form MMS–4430, Solid Minerals Production and Royalty Report)," to clarify the regulatory language we are covering under 30 CFR parts 206, 210, and 218.

For further clarification, we are including citations in this ICR renewal that cover the compliance process, although it is exempt from the PRA by OMB's Office of Regulatory Affairs (ORA) and, therefore, no burden hours are reported for these sections. For the remaining sections, we are increasing the burden hours. Over the past 3 years, lessees have advised MMS that it takes more time to report on Form MMS–4430, and we are adjusting the burden hours accordingly.

Frequency of Response: Annually.

Estimated Number and Description of Respondents: 210 Indian lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,488 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
	Valuation Standards			
206.254	Quality and quantity measurement standards for reporting and paying royalties. * * * Coal quantity information shall be reported on appropriate forms required under 30 CFR part 216 and on the Solid Minerals Production and Royalty Report, Form MMS–4430, as required under 30 CFR part 210.	10 minutes	12	2
206.257(b)(1)	Valuation standards for ad valorem leases. (b)(1) * * * The lessee shall have the burden of demonstrating that its contract is arm's length. * * *	Produce Records: The Office of Regulatory Affairs (ORA) determined that the compliance process is exempt from the Paperwork Reduction Act because MMS staff ask non-standard questions to resolve exceptions.		
206.257(b)(3)	Valuation standards for ad valorem leases. (3) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.257(b)(4)	Valuation standards for ad valorem leases. (4) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.257(d)(2)	Valuation standards for ad valorem leases. (2) Any Federal lessee will make available upon request to the authorized MMS or State representatives, to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales value and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
	Washing Allowances			
206.259(a)(1)	Determination of washing allowances. (a) Arm's-length contracts. (1) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.259(a)(1)	Determination of washing allowances. (a) Arm's-length contracts. (1) * * * The lessee must claim a washing allowance by reporting it as a separate line entry on the Form MMS–4430.	30 minutes	12	6
206.259(a)(3)	Determination of washing allowances. (a) Arm's-length contracts. * * * (3) * * * When MMS determines that the value of the washing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.259(b)(1)	Determination of washing allowances. (b) Non-arm's-length or no contract. (1) * * * The lessee must claim a washing allowance by reporting it as a separate line entry on the Form MMS–4430. * * *.	1 hour	12	12
206.259(c)(1)(i)	Determination of washing allowances. (c) Reporting requirements—(1) Arm's-length contracts. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–4430.	5 minutes	12	1
206.259(c)(1)(ii)	Determination of washing allowances. (c) Reporting requirements—(1) Arm's-length contracts. * * * (ii) The MMS may require that a lessee submit arm's-length washing contracts and related documents. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.259(c)(2)(i)	Determination of washing allowances. (c) Reporting requirements—* * * (2) Non-arm's-length or no contract. (i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on the Form MMS–4430.	5 minutes	12	1
206.259(c)(2)(iii)	Determination of washing allowances. (c) Reporting requirements—* * * (2) Non-arm's-length or no contract.* * * (iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.259(e)(2)	Determination of washing allowances. (e) Adjustments. * * * (2) The lessee must submit a corrected Form MMS–4430 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.	30 minutes	4	2

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
Transportation Allowances				
206.262(a)(1)	Determination of transportation allowances. (a) Arm's-length contracts. (1) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length.* * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.262(a)(1)	Determination of transportation allowances. (a) Arm's-length contracts. (1) * * * The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–4430.	30 minutes	12	6
206.262(a)(3)	Determination of transportation allowances. (a) Arm's-length contracts.* * * (3) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.262(b)(1)	Determination of transportation allowances. (b) Non-arm's-length or no contract.—(1) * * * The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–4430. * * *.	1 hour	12	12
206.262(c)(1)(i)	Determination of transportation allowances. (c) Reporting requirements—(1) Arm's-length contracts. (i) The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–4430.	5 minutes	12	1
206.262(c)(1)(ii)	Determination of transportation allowances. (c) Reporting requirements—(1) Arm's-length contracts. * * * (ii) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.262(c)(2)(i)	Determination of transportation allowances. (c) Reporting requirements—(2) Non-arm's-length or no contract. (i) The lessee must notify MMS of an allowance based on the incurred costs by using a separate line entry on Form MMS–4430.	5 minutes	12	1
206.262(c)(2)(iii)	Determination of transportation allowances. (c) Reporting requirements—(2) Non-arm's-length or no contract. * * * (iii) Upon request by MMS, the lessee shall submit all data used to prepare the allowance deduction. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
Valuation Standards				
206.453	Quality and quantity measurement standards for reporting and paying royalties. * * * Coal quantity information shall be reported on appropriate forms required under 30 CFR part 216 and on the Solid Minerals Production and Royalty Report, Form MMS–4430, as required under 30 CFR part 210.	10 minutes	12	2
206.456(b)(1)	Valuation standards for ad valorem leases. (b)(1) * * * The lessee shall have the burden of demonstrating that its contract is arm's-length. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.456(b)(3)	Valuation standards for ad valorem leases. (b)(3) * * * When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported coal value.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.456(b)(4)	Valuation standards for ad valorem leases. (b)(4) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the coal production.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.456(d)(2)	Valuation standards for ad valorem leases. (d)(2) An Indian lessee will make available upon request to the authorized MMS or Indian representatives, or to the Inspector General of the Department of the Interior or other persons authorized to receive such information, arm's-length sales and sales quantity data for like-quality coal sold, purchased, or otherwise obtained by the lessee from the area.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
	Washing Allowances			
206.458(a)(1)	Determination of washing allowances. (a) Arms-length contracts. (1) * * * However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report, in accordance with paragraph (c)(1) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.	Burden covered under OMB Control Number 1010–0074.		
206.458(a)(3)	Determination of washing allowances. (a) Arms-length contracts. * * * (3) * * * When MMS determines that the value of the washing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's washing costs.	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.458(b)(1)	Determination of washing allowances. (b) Non-arm's-length or no contract. (1) * * * However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 in accordance with paragraph (c)(2) of this section. A washing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4292 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. * * *	Burden covered under OMB Control Number 1010–0074. See § 206.458(a)(1).		
206.458(c)(1)(i)	Determination of washing allowances. (c) Reporting requirements. (1) Arm's-length contracts. (i) With the exception of those washing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS–4430, Solid Minerals Production and Royalty Report. * * *	Burden covered under OMB Control Number 1010–0074. See § 206.458(a)(1).		
206.458(c)(1)(iii)	Determination of washing allowances. (c) Reporting requirements. (1) Arm's-length contracts. * * * (iii) After initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4292 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	Burden covered under OMB Control Number 1010–0074. See § 206.458(a)(1).		
206.458(c)(1)(iv)	Determination of washing allowances. (c) Reporting requirements. (1) Arm's-length contracts. * * * (iv) MMS may require that a lessee submit arm's-length washing contracts and non-standard questions related documents * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.458(c)(2)(i)	Determination of washing allowances. (c) Reporting requirements. * * * (2) Non-arm's-length or no contract. (i) With the exception of those specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–4430, Solid Minerals Production and Royalty Report. * * *	Burden covered under OMB Control Number 1010–0074. See § 206.458(a)(1).		
206.458(c)(2)(iii)	Determination of washing allowances. (c) Reporting requirements. * * * (2) Non-arm's-length or no contract. * * * (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS–4292 its estimated costs for the next calendar year. * * * Form MMS–4292 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).	Burden covered under OMB Control Number 1010–0074. See § 206.458(a)(1).		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.458(c)(2)(vi)	Determination of washing allowances. (c) Reporting requirements. * * * (2) Non-arm's-length or no contract. * * * (vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Forms MMS–4292. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRAct because MMS staff ask non-standard questions to resolve exceptions.		
206.458(c)(4)	Determination of washing allowances. (c) Reporting requirements. * * * (4) Washing allowances must be reported as a separate line on the Form MMS–4430, unless MMS approves a different reporting procedure	5 minutes	12	1
206.458(e)(2)	Determination of washing allowances. (e) Adjustments. * * * (2) The lessee must submit a corrected Form MMS–4430 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS	30 minutes	4	2
	Transportation Allowances			
206.461(a)(1)	Determination of transportation allowances. (a) Arm's-length contracts. (1) * * * However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee	Burden covered under OMB Control Number 1010–0074.		
206.461(a)(3)	Determination of transportation allowances. (a) Arm's-length contracts. * * * (3) * * * When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.461(b)(1)	Determination of transportation allowances. (b) Non-arm's-length or no contract. (1) * * * However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4293 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee * * *	Burden covered under OMB Control Number 1010–0074. See § 206.461(a)(1).		
206.461(c)(1)(i)	Determination of transportation allowances. (c) Reporting requirements. Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–4430, Solid Minerals Production and Royalty Report	Burden covered under OMB Control Number 1010–0074. See § 206.461(a)(1).		
206.461(c)(1)(iii)	Determination of transportation allowances. (c) Reporting requirements. (1) Arm's-length contracts. * * * (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4293 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period). Lessees may request special reporting procedures in unique allowance reporting situations, such as those related to spot sales	Burden covered under OMB Control Number 1010–0074. See § 206.461(a)(1).		
206.461(c)(1)(iv)	Determination of transportation allowances. (c) Reporting requirements. (1) Arm's-length contracts. * * * (iv) MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.461(c)(2)(i)	Determination of transportation allowances. (c) Reporting requirements. * * * (2) Non-arm's-length or no contract. (i) With the See § 206.461(a)(1). exception of those transportation allowances specified in paragraphs (c)(2)(v) and (c)(2)(vii) of this section, the lessee shall submit an initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–4430, Solid Minerals Production and Royalty Report * * *	Burden covered under OMB Control Number 1010–0074.		
206.461(c)(2)(iii)	Determination of transportation allowances. (c) Reporting requirements. * * * (2) Non-arm's-length or no contract.* * * (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4293 containing the actual costs for the previous reporting period. * * * Form MMS–4293 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period)	Burden covered under OMB Control Number 1010–0074. See § 206.461(a)(1).		
206.461(c)(2)(vi)	Determination of transportation allowances. (c) Reporting requirements. * * * (2) Non-arm's-length or no contract.* * * (vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4293 * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions.		
206.461(c)(4)	Determination of transportation allowances. (c) Reporting requirements. * * * (4) Transportation allowances must be reported as a separate line item on Form MMS–4430, unless MMS approves a different reporting procedure	5 minutes	12	1
206.461(e)(2)	Determination of transportation allowances. (e) Adjustments. * * * (2) The lessee must submit a corrected Form MMS–4430 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS	30 minutes	4	2
210.52(a)	Report of sales and royalty remittance. (a) You must submit a completed Form MMS–2014 (Report of Sales and Royalty Remittance) to MMS with: * * *	Burden covered by OMB Control Number 1010–0140.		
210.201	How do I submit Form MMS–4430, Solid Minerals Production and Royalty Report? (a) What to submit. (1) You must submit a completed Form MMS–4430 for— * * *	20 minutes	2,400	800
210.202	How do I submit sales summaries? (a) What to submit. (1) You must submit sales summaries for all coal and other solid minerals produced from Federal and Indian leases and for any remote storage site from which you sell Federal or Indian solid minerals * * *	15 minutes	1,440	360
210.203	How do I submit sales contracts? (a) What to submit. You must submit sales contracts, agreements, and contract amendments for the sale of all coal and other solid minerals produced from Federal and Indian leases with ad valorem royalty terms * * *	1 hour	180	180
210.204	How do I submit facility data? (a) What to submit. (1) You must submit facility data if you operate a wash plant, refining, ore concentration, or other processing facility for any coal, sodium, potassium, metals, or other solid minerals produced from Federal or Indian leases with ad valorem royalty terms * * *	15 minutes	360	90
210.205	Will I need to submit additional documents or evidence to MMS? (a) Federal and Indian lease terms allow us to request detailed statements, documents, or other evidence necessary to verify compliance * * * (b) We will request this additional information as we need it * * *	Produce Records: ORA determined that the compliance process is exempt from the PRA because MMS staff ask non-standard questions to resolve exceptions (same as 206.461(a)(3)).		
218.52(a) and (c)	How does a lessee designate a Designee? (a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf under 30 U.S.C. 1712(a), you must notify MMS or the applicable delegated State in writing of such designation * * *. (c) If you want to terminate a designation you made under paragraph (a) of this section, you must provide to MMS in writing before the termination * * *	Burden covered by OMB Control Number 1010–0107.		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
218.57(a)(2)	Providing information and claiming rewards. (a) General. * * * (2) If a person has any information he or she believes would be valuable to MMS, that person ("informant") should submit the information in writing, in the form of a letter * * *	Burden covered by OMB Control Number 1010–0107.		
218.57(b)(3)	Providing information and claiming rewards. (b) Claim for reward. * * * (3) To file a claim for reward the informant must: (i) Notify the Director, MMS * * * that he/she is claiming a reward * * *	Burden covered by OMB Control Number 1010–0107.		
218.201(b)	Method of payment. You must tender all payments * * *, except as follows: * * * (b) For Form MMS–4430 payments, include both your customer identification and your customer document identification numbers on your payment document * * *	20 seconds	1,095	6
		Total	5,631	1,488

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home addresses from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: March 1, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–5066 Filed 3–5–04; 8:45 am]

BILLING CODE 4310–MR–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Final)]

Ironing Tables and Certain Parts Thereof from China

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1047 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of ironing tables and certain parts thereof, provided for in subheadings 9403.20.00 and 9403.90.80

of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: February 3, 2004.

FOR FURTHER INFORMATION CONTACT: Megan Spellacy (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of ironing tables and certain parts thereof from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 30, 2003, by Home Products International, Inc. (HPI), Chicago, IL.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 1, 2004 and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 15, 2004 at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 8, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 10, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 8, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 22, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 22, 2004. On July 9, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 13, 2004, but such final comments must not

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "* * * floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this investigation.

Furthermore, this investigation specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this investigation, the term "unassembled" ironing table means a product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means a product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term "incomplete" ironing table means a product shipped or sold as a "bare board"—*i.e.*, a metal-top table only, without the pad and cover—with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this investigation under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The investigation covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or counter top models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under the new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope remains dispositive."

contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–5160 Filed 3–5–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–11]

U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt on February 17, 2004 of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. TA–2104–11, U.S.-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)).

Background: As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)–(3) of the Trade Act of 2002 assessing the likely impact of the U.S. Free Trade agreement with Australia on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers. The report will assess the likely impact of the agreement on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the agreement, and the interests of United States consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature regarding any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. The President notified the Congress on February 13, 2004, of his intent to enter into an FTA with Australia.

The Commission has begun its assessment, and it will seek public input for the investigation through a public hearing on March 30, 2004 (*see* below).

EFFECTIVE DATE: March 2, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Jennings, Project Leader, Office of Economics (202–205–3260). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). For media information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on March 30, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., March 16, 2004 in accordance with the requirements in the "Submissions" section below. In the event that, as of the close of business on March 16, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after March 16, 2004, to determine whether the hearing will be held.

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the "Submissions" section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., March 22, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 6, 2004.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "nonconfidential" version, and that the confidential business information be clearly identified by means of brackets.

The Commission intends to publish only a public report in this investigation. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Issued: March 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–5159 Filed 3–5–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Child Labor Education Initiative

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of intent to solicit cooperative agreement applications.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to award approximately U.S. $29 million to organizations to develop and implement formal, non-formal, and vocational education programs as a means to combat exploitative child labor in the following regions and countries: the Middle East (Lebanon, West Bank and Gaza, and Yemen), Africa (Ethiopia, Mozambique, Rwanda, and Zambia), and Panama. ILAB intends to solicit cooperative agreement applications from qualified organizations (*i.e.*, any commercial, international, educational, or non-profit organization capable of successfully developing and implementing education programs) to implement programs that promote school attendance and provide educational opportunities for working children or children at risk of starting working. The programs should focus on innovative ways to address the many gaps and challenges to basic education found in the countries mentioned above. Please refer to *http://www2.dol.gov/ILAB/grants/main.htm* for an example of a previous notice of availability of funds and solicitation for cooperative agreement applications.

DATES: Specific solicitations for cooperative agreement applications will be published in the **Federal Register** and remain open for at least 30 days from the date of publication. All cooperative agreements awarded will be made before September 30, 2004.

ADDRESSES: Once solicitations are published in the **Federal Register**, applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov*. All inquiries should make reference to the USDOL Child Labor Education Initiative—Solicitations for Cooperative Agreement Applications.

SUPPLEMENTARY INFORMATION: Since 1995, USDOL has supported a worldwide technical assistance program implemented by the International Labor Organization's International Program on the Elimination of Child Labor (ILO–IPEC). ILAB has provided over $270 million to ILO–IPEC and other organizations for international technical assistance to combat abusive child labor around the world.

In its FY 2004 appropriations, in addition to funds earmarked for ILO–IPEC, USDOL received $37 million to provide bilateral assistance to improve access to basic education in international areas with a high rate of abusive and exploitative child labor. All such FY 2004 funds will be obligated prior to September 30, 2004.

USDOL's Child Labor Education Initiative nurtures the development, health, safety, and enhanced future employability of children around the world by increasing access to basic education for children removed from child labor or at risk of entering it. Eliminating child labor will depend in part on improving access, quality, and relevance of education. Without improving educational quality and relevance, children withdrawn from child labor may not have viable alternatives and may return to work or resort to other hazardous means of subsistence.

The Child Labor Education Initiative has the following four goals:

1. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

2. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

3. Strengthen national institutions and policies on education and child labor; and

4. Ensure the long-term sustainability of these efforts.

When working to increase access to quality basic education, USDOL strives to complement existing efforts to eradicate the worst forms of child labor, to build on the achievements of and lessons learned from these efforts, to expand impact and build synergies among actors, and to avoid duplication of resources and efforts.

Signed at Washington, DC, this 2nd day of March, 2004.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 04–5074 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,709]

Alfmeier Corporation Seating Comfort Systems, a Subsidiary of Alfmeier Prazision, Dandridge, Tennessee; Notice of Revised Determination on Reconsideration

By letter postmarked January 6, 2004, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 12, 2003, based on the finding that imports of lumbar seating prototypes did not contribute importantly to worker separations at the subject firm. The denial notice was published in the **Federal Register** on January 16, 2004 (69 FR 2622).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation.

Upon further review and contact with the company official, it was revealed that the company shifted its production of lumbar seating prototypes to Germany with the intent to import lumbar seating prototypes back into the United States. The investigation further revealed that employment declined at the subject firm.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

At least three workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that likely increase in imports of articles like or directly competitive with those produced at Alfmeier Corporation, Seating Comfort Systems, a subsidiary of Alfmeier Prazision, Dandridge, Tennessee, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Alfmeier Corporation, Seating Comfort Systems, a subsidiary of Alfmeier Prazision, Dandridge, Tennessee, who became totally or partially separated from employment on or after November 19, 2002, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 19th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–469 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,068]

American Lock Co., Crete, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 23, 2004, in response to a petition filed by the company on behalf of workers at American Lock Company, Crete, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5084 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,189]

Bloomsburg Mills, Inc., Bloomsburg, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2004, in response to a petition filed by a company official on behalf of workers at Bloomsburg Mills, Inc., Bloomsburg, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 12th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5080 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,065]

Bremner Incorporated, Ripon, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2004 in response to a petition filed on behalf of workers at Bremner Incorporated, Ripon, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of February 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5085 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,023]

Cardinal Glass Industries, Inc. Sextonville, Wisconsin; Notice of Negative Determination Regarding Application for Reconsideration

On January 29, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 11, 2004 (69 FR 6693).

The Department initially denied TAA to workers of Cardinal Glass Industries, Inc. because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974 was not met. The company did not import glass handling equipment in the relevant period nor did it shift production of glass handling equipment to a foreign country. The investigation revealed that the cause of the worker separations was a domestic shift of production.

The company official who filed the reconsideration request alleges that, in order to remain competitive with foreign suppliers of glass, the company was forced to keep the prices of glass at the same level for the last twenty years and that the glass production declines are attributed to foreign competition. The official further states that, the Sextonville facility was not efficient enough in both production speed and quality to meet competitive forces; however it was an integral part in the selling of glass products.

Contact with another company official at the headquarters of Cardinal FG confirmed what had been established in the initial investigation, which was that workers of the subject firm produced glass handling equipment and their separations were predominantly caused by a shift of production from the Sextonville, Wisconsin facility to a newly built domestic site at Spring Green, Wisconsin. The official further stated that production at the new facility will be of an equal or greater value to that produced by the subject firm.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. As the majority of the production of glass handling equipment was used to supply internal demand, and the company reported no imports, there is no

evidence of import impact in regard to this product in conjunction with an assessment of eligibility for affected workers at the subject plant.

The petitioner states that the glass handling equipment produced by the subject firm has been displaced as a result of an increase in imports of glass and mentions a new glass plant going into production in Mexico in the next month.

As noted above, the Department considers imports of like or directly competitive products (in this case, glass handling equipment, as the initial investigation established that layoffs are predominantly attributable to the domestic shift of production) when conducting TAA investigations. Thus, although the products produced by the subject firm workers may be indirectly import impacted, the import impact of glass is not relevant to an investigation of eligibility for trade adjustment assistance on behalf of subject firm workers producing glass handling equipment.

The review of the initial investigation revealed that the Department erred in its description of the subject firm's product during the customer survey, thus purchases of glass were surveyed instead of glass handling equipment. Further contact with the company official revealed that major customers of the subject firm are all internal Cardinal Glass Industries, Inc. glass processing plants. It was found that these customers do not import glass handling equipment.

The investigation further revealed that none of the Cardinal Glass Industries, Inc. facilities are under an existing Trade Adjustment Assistance certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–465 Filed 03–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,197]

Electric Motor Repair Center, Shelby, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2004, in response to a worker petition filed by a company official on behalf of workers of Electric Motor Repair Center, Shelby, North Carolina.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently, the investigation has been terminated.

Signed in Washington, DC this 13th day of February, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5079 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,647]

Gates Corporation, Air Springs Division, Including Leased Workers of Manpower and JRC Quality Systems, LLC, Denver, Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 15, 2003, applicable to workers of Gates Corporation, Air Springs Division, including temporary workers of Manpower, Denver, Colorado. The notice was published in the **Federal Register** on January 16, 2004 (69 FR 2624).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of JRC Quality Systems, LLC were employed at Gates Corporation, Air Springs Division at the Denver, Colorado location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of JRC Quality Systems, LLC working at Gates Corporation, Air Springs Division, Denver, Colorado.

The intent of the Department's certification is to include all workers employed at Gates Corporation, Air Springs Division Trends Clothing Corporation, a.k.a. Trends International, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–53,647 is hereby issued as follows:

All workers of Gates Corporation, Air Springs Division, including leased workers of Manpower and JRC Quality Systems, LLC, Denver, Colorado, who became totally or partially separated from employment on or after November 24, 2002, through December 15, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–468 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,193]

Gates Corporation, Air Springs Division, Denver, Colorado; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 6, 2004 in response to a worker petition which was filed on behalf of workers at Gates Corporation, Air Springs Division, Denver, Colorado.

An active certification covering the petitioning group of workers is already in effect (TA–W–53,647, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of February 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–473 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,783]

Geotrac, Inc., Norwalk, Ohio; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 23, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Geotrac, Inc., Norwalk, Ohio was signed on January 5, 2004, and published in the **Federal Register** on February 6, 2004 (69 FR 5866).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of a worker at Geotrac, Inc., Norwalk, Ohio engaged in generating flood certifications for the mortgage lending industry. The petition was denied because the petitioning worker did not produce an article within the meaning of Section 222 of the Act.

The petitioner's main allegation consists in the fact that employees of Geotrac, Inc., Norwalk, Ohio were separated as a result of a shift of their positions to India.

In order to meet eligibility requirements, the petitioning worker group must be engaged in production. Automatic generation of certificates for the mortgage lending industry does not constitute production within the meaning of Section 222 of the Trade Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–470 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,166]

Harriet and Henderson Yarns, Inc., Fort Payne Distribution Center, Fort Payne, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 4, 2004, in response to a worker petition which was filed on behalf of workers at Harriet and Henderson Yarns, Inc., Fort Payne Distribution Center, Fort Payne, Alabama.

An active certification covering the petitioning group of workers is already in effect (TA–W–53,293B, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5081 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,937]

Johnson Controls, Inc., Laurel Hill, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 5, 2004, in response to a worker petition which was filed on behalf of workers at Johnston Controls, Inc., Laurel Hill, North Carolina.

An active certification covering the petitioning group of workers is already in effect (TA–W–53,481, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–472 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,917]

Kincaid Furniture Company, Inc., Hudson, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2003, in response to a petition filed on behalf of workers at Kincaid Furniture Company, Inc., Hudson, North Carolina.

The petitioning group of workers is covered by an active certification for Kincaid Furniture Company, Inc., Plant 8 currently known as Plant 18, Lenoir, North Carolina (TA–W–50,735, as amended).

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–471 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,273]

KS Bearings, Inc., Greensburg, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 17, 2004, in response to a petition filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 1457, on behalf of workers at KS Bearings, Inc., Greensburg, Indiana.

The petition is a duplicate of the petition filed on February 12, 2004 (TA–W–54,248), that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would serve no purpose, and the investigation under this petition is terminated.

Signed in Washington, DC this 19th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5078 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,236]

Motion Industries, Inc., Altoona, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2004 in response to a worker petition which was filed on behalf of workers at Motion Industries, Inc., Altoona, Pennsylvania.

An active certification covering the petitioning group of workers is already in effect (TA–W–52,925, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 17th day of February 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–474 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,076]

Oxford Drapery, Inc., Timmonsville, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 26, 2004, in response to a petition filed by a company official on behalf of workers at Oxford Drapery, Inc., Timmonsville, South Carolina.

This petitioning group of workers is covered by an earlier petition filed on January 14, 2004 (TA–W–54,009), that is the subject of an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 4th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5083 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,088]

Parsons Diamond Products, Inc., West Hartford, Connecticut; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 27, 2004, in response to a petition filed by a company official on behalf of workers of Parsons Diamond Products, Inc., West Hartford, Connecticut.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed in Washington, DC, this 19th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5082 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,116]

Remington Products Company L.L.C., Bridgeport, Connecticut; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 30, 2004, in response to a worker petition filed on behalf of workers at Remington Products Company L.L.C., Bridgeport, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 19th day of February 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5086 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,481]

Springs Industires, Inc., Including Leased Workers Of Phillips Staffing, Including Contract Workers Of Johnson Controls, Inc., Springfield Plant, Laurel Hill, North Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 24, 2003, applicable to workers of Springs Industries, Inc., including leased workers of Phillips Staffing, Springfield Plant, Laurel Hill, North Carolina. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74978).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that contract workers

of Johnson Controls, Inc., were engaged in activities related to the production of unfinished fabrics at Springs Industries, Inc., Springfield Plant at the Laurel Hill, North Carolina location of the subject firm.

Based on these findings, the Department is amending this certification to include contract workers of Johnson Controls working at Springs Industries, Inc., Springfield Plant, Laurel Hill, North Carolina.

The intent of the Department's certification is to include all workers of Springs Industries, Inc., Springfield Plant, who were adversely affected by increased imports of unfinished fabrics.

The amended notice applicable to TA–W–53,481 is hereby issued as follows:

All workers of Springs Industries, Inc., leased workers of Phillips Staffing, Springfield Plant, and contract workers of Johnson Controls, Inc. working at Springs Industries, Inc., Springfield Plant, Laurel Hill, North Carolina, who became totally or partially separated from employment on or after October 31, 2002, through November 24, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 20th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–466 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,577]

TDK Texas Corporation, A Subsidiary of TDK USA Corporation, El Paso, Texas; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 5, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on November 24, 2003 and published in the **Federal Register** on December 29, 2003 (68 FR 74978).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at TDK Texas Corporation, a subsidiary of TDK USA Corporation, El Paso, Texas, engaged in distribution of electronic components was denied because the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The workers appear to be alleging that layoffs at TDK Texas Corporation, a subsidiary of TDK USA Corporation, El Paso, Texas, was attributed to free trade and attempt to depict this in their request for reconsideration.

The worker allegations of trade impact would only be relevant if all other eligibility requirements for trade adjustment assistance were met in this case. However, distribution services do not meet the definition of production of an article as established in Section 222 of the Trade Act, thus the workers in this case do not meet the eligibility requirements of TAA.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–467 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Survivor's Form for Benefits (CM–912). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 7, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

This collection of information is required to administer the benefit payment provisions of the Black Lung Act for survivors of deceased miners. Form CM–912 is authorized for use by the Black Lung Benefits Act 30 U.S.C. 901, *et seq.*, 20 CFR 410.221 and CFR 725.304. Completion of Form CM–912 constitutes the application for benefits by survivors and assists DCMWC in determining the survivor's entitlement to benefits. This information collection is currently approved for use through August 31, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to gather information to determine eligibility for benefits of a survivor of a Black Lung Act beneficiary.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Survivor's Form for Benefits.

OMB Number: 1215–0069.

Agency Number: CM–912.

Affected Public: Individuals or households.

Total Respondents: 2,800.

Total Annual Responses: 2,800.

Average Time per Response: 8 minutes.

Estimated Total Burden Hours: 373.

Frequency: One time.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $800.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 2, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–5075 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops—29 CFR Part 575. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before May 7, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. *Background:* Section 13 (c) (4) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.*, authorizes the Secretary of Labor to grant a waiver of child labor provisions of the FLSA for the agricultural employment of 10 and 11 year old minors in the hand harvesting of short season crops if specific requirements and conditions are met. The Act requires that all employers who are granted such waivers keep on file a signed statement of the parent or person standing in the place of the parent of each 10 and 11 year old minor, consenting to their employment, along with a record of the name and address of the school in which the minor is enrolled. This information collection is currently approved for use through August 31, 2004.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks approval for the extension of this information collection in order to determine whether the statutory requirements and conditions for granting a requested exemption have been met.

Type of Review: Extension.

Agency: Employment Standards Administration

Title: Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops—29 CFR Part 575.

OMB Number: 1215–0120.

Affected Public: Farms; individual or households.

Total Respondents: 1.

Total Responses: 1.

Average Time per Response: 4 hours.

Estimated Total Burden Hours: 4.

Frequency: On Occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 2, 2004.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–5076 Filed 3–5–04; 8:45 am]

BILLING CODE 4510–27–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, March 18, 2004, and Friday, March 19, 2004, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on March 18, and at 9 a.m. on March 19.

Topics for discussion include: Long-term care hospitals; the Medicare hospice program; information technology in healthcare; issues related to hospital-based and freestanding skilled nursing facilities; chronic care improvement; beneficiaries' financial liability; private insurers' strategies for purchasing imaging and other services; prescription drug implementation issues; and the Medicare dual eligible population. The Commission will also discuss work plans for two congressionally mandated reports on the usefulness of the IRS Form 990 in reporting on hospitals' access to capital and an assessment of the strengths and weaknesses of available data to judge total financial circumstances of hospitals and other providers of Medicare services.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 04–5161 Filed 3–5–04; 8:45 am]

BILLING CODE 6820–BW–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

United States and Mexico, United States Section; Notice of Availability of a Final Environmental Assessment and Finding of No Significant Impact for Sediment Removal Downstream of Retamal Diversion Dam, in the Lower Rio Grande Flood Control Project, Located in Hidalgo County, Texas

AGENCY: United States Section, International Boundary and Water Commission (USIBWC), United States and Mexico.

ACTION: Notice of availability of final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508), and the U.S. Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083), the U.S. Section hereby gives notice that the Final Environmental Assessment and Finding of No Significant Impact for *Sediment Removal Downstream of Retamal Diversion Dam*, in the Lower Rio Grande Flood Control Project, located in Hidalgo County, Texas are available. A notice of finding of no significant impact dated October 7, 2003, provided a thirty (30) day comment period before making the finding final. The notice was published in the **Federal Register** on October 17, 2003 (68 FR 59818).

FOR FURTHER INFORMATION CONTACT: Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission, 4171 N. Mesa, C–100, El Paso, Texas 79902. Telephone: (915) 832–4701, email: *danielborunda@ibwc.state.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Action

The project includes dredging the sediment and beneficially use or dispose of all the material on vacant Mexican Federal government land adjacent to the river at the dredging location. The size of the project area is approximately 4.94 acres, which includes 2.1 acres of wetland. The EA analyzes potential impacts from dredging approximately 54,000 cubic yards of sediment material, either hydraulically (Option 1) or mechanically (Option 2), during the non-irrigation season between September and February when water levels in the Rio Grande are maintained at lower levels. Construction activities include transporting dredged materials to dewatering cells on the Mexican riverbank. A hydraulic piping system may be set up to transport the slurry mix directly to the final disposal area or the materials may be transported by trucks provided by Mexico, depending on the disposal method. A coffer dam may also be constructed to de-water alternate sides of the river during dredging activities. The EA provides details of the action, explains the purpose and need for the action, and assesses the potential impacts of the proposed action and alternatives.

Alternatives Considered

The USIBWC proposes to remove the vegetated island and sandbar by dredging the sediment, either hydraulically (Option 1) or mechanically (Option 2), and beneficially use or dispose of all the material on vacant Mexican Federal government land adjacent to the river at the dredging location.

The sandbar and island downstream of the Retamal Diversion Dam will not be removed in the no action alternative. The accumulation of sediment will likely continue in the channel on the U.S. side of the Rio Grande and along the concrete apron beneath the flood gates, thus potentially impairing the ability of the gates to operate effectively to properly control flood events. The main channel in the river could continue shifting toward the Mexican side, thus potentially changing the boundary location between the two countries.

Availability

Single hard copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC home page at *www.ibwc.state.gov*.

Dated: February 25, 2004.

Susan Daniel,

Assistant General Counsel.

[FR Doc. 04–4681 Filed 3–5–04; 8:45 am]

BILLING CODE 4710–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–040)]

President's Commission on Implementation of United States Space Exploration Policy; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the President's Commission on Implementation of United States Space Exploration Policy.

DATES: Wednesday, March 24, 2004, 1 p.m. to 4 p.m. and Thursday, March 25, 2004, 9 a.m. to 4:30 p.m.

ADDRESSES: Georgia Centers for Advanced Telecommunications Technology, Georgia Institute of Technology, 250 14th Street, NW., Atlanta, GA 30318.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Schmidt, Office of the Administrator, National Aeronautics and Space Administration, Washington, DC, (202) 358–1808.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Competitiveness and Prosperity
—Science and Technology
—Management and Sustainability
—Education and Youth

It is not possible to accommodate the full notice period because of the short time frame in which the Commission is expected to finish its work and write its report. Visitors will be requested to sign a visitor's register.

Al Condes,

Acting Assistant Administrator for External Relations, National Aeronautics and Space Administration.

[FR Doc. 04–5164 Filed 3–5–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Policy Working Group Request for Public Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Request for public comment.

SUMMARY: The Electronic Records Policy Working Group is inviting interested persons to provide their written views on issues relating to implementing section 207(e)(1)(A) of the E-Government Act of 2002. That section calls for "the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records." The topics on which the Working Group is seeking comment and additional information about the Working Group are provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: To be considered, comments must be received no later than April 5, 2004.

ADDRESSES: Send your comments to *ERPWG@nara.gov* or by fax to 301–837–0319.

SUPPLEMENTARY INFORMATION:

Background

The Electronic Records Working Group was established by the Interagency Committee on Government Information (ICGI), to fulfill the requirements of subsection 207(e) of the Act, "Public Access to Electronic Information." The Working Group's members are drawn from a number of Federal agencies, with NARA as the chair. The Working Group will develop for the ICGI proposed recommendations on records management policies and procedures. The Working Group has held several focus groups with interested stakeholders from Federal agencies, public interest groups, and professional organizations and will hold a public meeting on March 30, 2004 (see 69 FR 9855, March 2, 2004) to gather input to inform their recommendations. In order to solicit the opinions of stakeholders who could not attend one of these meetings, the Working Group is providing this opportunity to comment.

Issues for Comment

The Working Group is seeking feedback on the following topics in their meetings and this notice.

1. The definition of "Government information on the Internet and other electronic records." The operating definitions currently used by the Working Group are as follows:

A. *Government information on the Internet* includes:

- Information posted on Government web sites,
- Information exchanged between Federal agencies,
- Information exchanged between Federal agencies and the public,
- Information exchanged between Federal agencies and other governments,
- Government-enabled web services,
- Standard government forms,
- E-government business transactions.

B. *Other electronic records*—electronic information meeting the definition of a Federal record per 44 U.S.C. 3301. *Records* include:

- All books, papers, maps, photographs, machine readable materials, or other documentary materials,
- regardless of physical form or characteristics,
- made or received by an agency of the United States Government,
- under Federal law or,
- in connection with the transaction of public business,
- and preserved or appropriate for preservation by that agency or its legitimate successor,
- as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or,
- because of the informational value of the data in them (44 U.S.C. 3301).

2. Perceived barriers to effective management of "Government information on the Internet and other electronic records." The operating definition of *effective management* currently used by the Working Group includes:

- Managing through the life cycle,
- Providing for accessibility and retrieval,
- Providing sufficient security,
- Ensuring consistency (ability to reproduce record),
- Providing for the integrity of records over time,
- Ensuring no loss of records,
- Ensuring compatibility with standard formats,
- Managing format changes over time,
- Providing for long-term record storage and migration of formats,
- Managing the location of records over time,
- Cost effective,
- Appropriate long-term custodianship.

3. Guidance tools for Federal agencies that would assist in overcoming the identified barriers.

Dated: March 2, 2004.

Lewis J. Bellardo.

Deputy Archivist of the United States.

[FR Doc. 04–5091 Filed 3–5–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting #55

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on Wednesday, March 31, 2004, from 11 a.m. to approximately 1 p.m. The meeting will be held in the Upstairs Conference Room at Zola's Restaurant, 800 F Street, NW., Washington, DC.

The Committee meeting will begin at 11 a.m. with a welcome, introductions and announcements by Adair Margo, Committee Chairman. This will be followed by a presentation by Marc Pachter (Director, National Portrait Gallery) and Lawrence Small (PCAH member) on renovations at the National Portrait Gallery. The meeting will include reports, presented by agency representatives, from the National Endowment for the Humanities, the Institute of Museum and Library Services, the National Endowment for the Arts, and the President's Committee on the Arts and the Humanities. The remainder of the meeting will focus on discussions of current activities in the area of youth arts and humanities learning and historic preservation/conservation as well as planned activities, including special events and international activities focusing on U.S.-Mexico cultural relations. The meeting will adjourn following closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 and advises, provides recommendations to, and assists the President, the National Endowment for the Arts, the National Endowment for the Humanities and the Institute of Museum and Library Services on matters relating to the arts and the humanities.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgiana Paul of the President's Committee seven days in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Dated: March 3, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–5136 Filed 3–5–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 151st Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 31, 2004 from 9 a.m.–12:15 p.m. (ending time is tentative) in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The meeting will begin with opening remarks and updates presented by the Chairman, after which new Council members will be sworn in. This will be followed by a Congressional/White House update and an update on the NEA Jazz Masters Initiative. There will be a presentation by Jeff Speck (NEA Design Director), the Honorable Joe Riley (Mayor of Charleston, SC), and Julie Bargmann (landscape architect) on the Mayors' Institute on City Design. The meeting will also include application review (Challenge America-Access, Heritage & Preservation, State and Regional Partnership Agreements, Folk & Traditional Arts Infrastructure, National Heritage Fellowships, Arts on Radio and Television, and Leadership Initiatives) and review of Guidelines (Arts on Radio and Television, National Heritage Fellowships, NEA Jazz Masters Fellowships, and Partnership Agreements). The meeting will conclude with general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications or fellowship nominations, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: March 3, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 04–5134 Filed 3–5–04; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, Llc; Notice Of Receipt And Availability Of Application For Renewal Of Point Beach Nuclear Plant, Units 1 And 2; Facility Operating License Nos. Dpr-24 And Dpr-27 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated February 25, 2004, from Nuclear Management Company, LLC., filed pursuant to Section 103 (Operating License Numbers DPR–24 and DPR–27) of the Atomic Energy Act of 1954, as amended, and 10 CFR Part 54, to renew the operating licenses for the Point Beach Nuclear Plant, Units 1 and 2, respectively. Renewal of the license would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating license for the Point Beach Unit 1 (DRP–24) expires on October 5, 2010, and the current operating license for Point Beach Unit 2 (DRP–27) expires on March 8, 2013. The Point Beach Nuclear Plant, Units 1 and 2 are pressurized-water reactors designed by Westinghouse Electric Corporation. Both units are located near the Town of Two Creeks near Two Rivers,

Wisconsin. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20582 or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML040580020. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, extension 301–415–4737, or by e-mail to *pdr@nrc.gov*.

A copy of the license renewal application for the Point Beach Nuclear Plant, Units 1 and 2, is also available to local residents near the Point Beach Nuclear Plant at the Lester Public Library 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 2nd day of March 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E4–478 Filed 3–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant Operations; Notice of Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on March 26, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, March 26, 2004—8 a.m. Until the Conclusion of Business

The purpose of this meeting is to discuss digital instrumentation and control research activities, including development of digital system reliability models. The Subcommittee will hear presentations by and hold discussions with representatives of the Office of Nuclear Regulatory Research, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (telephone 301/415–8716), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 1, 2004.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–5104 Filed 3–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards: Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on March 25, 2004, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 25, 2004—8:30 a.m. Until 11:30 a.m.

The Subcommittees will hear the status of the Risk Management Technical Specifications program related to Issue 4(b)—Use of configuration management for determining technical specification completion times. The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittees will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean Weston (telephone: 301–415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 2, 2004.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 04–5105 Filed 3–5–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26373; 812–12817]

Money Market Obligations Trust, et al.; Notice of Application

March 2, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the act in connection with the transfer of certain assets of Tax-Free Instruments Trust ("TFIT"), a series of Money Market Obligations Trust (the "Trust"), to Edward Jones Tax Free Money Market Fund (the "Jones Fund") in exchange for shares of the Jones Fund.

APPLICANTS: The Trust and the Jones Fund.

FILING DATES: The application was filed on May 1, 2002 and amended on March 1, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a

hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 26, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Leslie K. Ross, Esq., Reed Smith LLP, Federated Investors Tower, 1001 Liberty Avenue, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, established in 1988, is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Trust currently offers forty series, including TFIT. TFIT has two classes of shares, "Investment Shares" and "Institutional Service Shares." The Jones Fund is organized as a Massachusetts business trust and is registered under the Act as an open-end management investment company. The Jones Fund was established on January 25, 2001 and has not conducted any business other than that incident to its organization. TFIT and the Jones Fund (the "Funds") are both money market funds whose investment objective is to provide current income exempt from federal income tax consistent with stability of principal.

2. Federated Investment Management Company ("FIMCO"), a wholly-owned subsidiary of Federated Investors, Inc. ("Federated"), serves as investment adviser to TFIT. Passport Research Ltd. (the "Jones Adviser"), a Pennsylvania limited partnership, serves as investment adviser to the Jones Fund. The sole general partner of the Jones Adviser is FIMCO and the sole limited partner is Edward Jones & Co. L.P. ("Edward Jones"), a broker-dealer registered under the Securities Exchange Act of 1934. FIMCO and the Jones Adviser are registered as investment advisers under the Investment Advisers Act of 1940. Edward Jones brokerage customers (the "Jones Shareholders") hold almost eighty percent of TFIT's outstanding shares in connection with their brokerage accounts. All of the Jones Shareholders own Investment Shares. Applicants propose to transfer the Jones Shareholders from TFIT to the Jones Fund.

3. Rule 2510(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD Rule 2510(d)") provides an exception to the general rule prohibiting the exercise of discretionary power in a customer's account for which the customer has not given prior written authorization. NASD rule 2510(d) permits the use of negative response letters in connection with bulk exchanges at net asset value of money market funds in sweep accounts. A negative response letter would be provided to all Jones Shareholders at least 30 days in advance of the consummation of the Exchange (as defined below). The letter would contain a tabular comparison of the nature and amount of fees charged by the Funds as well as a comparative description of the investment objectives of each Fund. In addition, a prospectus for the Jones Fund would accompany the letter. Any shareholder objecting to the Exchange within the allotted time period would not have his or her shares exchanged and instead would remain a shareholder of TFIT. Following completion of the proposed Exchange, Jones Shareholders who elect to remain shareholders of TFIT will no longer be able to use it as a sweep vehicle in connection with their brokerage accounts.

4. Applicants propose that TFIT would transfer a pro rata portion of its assets (the "Assets") to the Jones Fund in exchange (the "Exchange") for shares of the Jones Fund (the "Jones Shares").[1] The Exchange will not be a taxable event. Immediately after the Exchange, the Jones Shares received by TFIT in exchange for the transferred Assets will be distributed to the Jones Shareholders pro rata in exchange for their TFIT shares (the "Redemption").[2]

5. The investment objective and policies, as well as the fee structure, of the Investment Shares class of TFIT and the Jones Fund are identical. In addition, applicants expect the expense ratios of the Investment Shares class of TFIT and the Jones Fund will be the same as TFIT's current expense ratio for the Investment Shares class after the Exchange and Redemption. Both the Jones Fund and the Investment Shares class of TFIT have a management fee of .50%, shareholder services fee of .25%, and other expenses of .15%, resulting in total gross expenses of .90%. After voluntary fee waivers and/or assumptions of expenses, the total annual operating expenses for the Investment Shares class of TFIT currently are, and the Jones Fund will be, .75%.

6. The Assets will be valued at their amortized cost value on the date of the Exchange so that the number of shares issued will equal the number of shares of TFIT held by Jones Shareholders. After the Exchange, each Jones Shareholder will hold the same number of Jones Shares as he or she held in TFIT prior to the Exchange. No brokerage commission, fee (except customary transfer fees) or remuneration will be paid in connection with the Exchange and Redemption.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company, or to purchase from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include any person controlling, controlled by, or under common control with, the other person.

2. Applicants state that TFIT and the Jones Fund may be viewed as being under the common control of FIMCO, and thus affiliated persons of each other. Applicants further state that to the extent that the Exchange and Redemption may be deemed to constitute a purchase and sale of securities between TFIT and the Jones Fund, the Exchange and Redemption would be prohibited by section 17(a).

3. Rule 17a–8 exempts certain mergers, consolidations, and purchases or sales of substantially all of the assets of affiliated registered investment

[1] Certain securities may be excluded from the pro rata transfer. Such securities include securities restricted on disposition, certificated securities, odd lots and fractional positions.

[2] Jones Shareholders not choosing to invest in the Jones Fund could remain in TFIT or redeem their shares either before or after the Redemption and Exchange.

companies from the provisions of section 17(a) of the Act provided, among other requirements, that the board of directors of each affiliated investment company determines that the transaction is in the best interests of the company and the interests of the existing shareholders will not be diluted as a result of the transaction. Applicants state that the relief provided by rule 17a–8 is unavailable for the Exchange and Redemption because the transaction does not involve substantially all of the assets of TFIT.

4. Section 17(b) provides that the Commission shall exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under section 17(b) to allow the Exchange and Redemption.

5. Applicants state that the board of trustees of TFIT and the board of trustees of the Jones Fund have approved the Exchange and Redemption in the manner required by rule 17a–8. In approving the Exchange and Redemption, the boards considered that (a) The Funds will not directly or indirectly bear any fees or expenses in connection with the proposed transactions; (b) the proposed transactions will not have any effect on the Funds' annual operating expenses, shareholder fees or services; (c) the proposed transactions will not result in a change to the investment objectives, restrictions and policies of the Funds; and (d) the proposed transactions will not result in direct or indirect federal income tax consequences to shareholders of the Funds. A majority of the trustees of TFIT and the Jones Fund are independent trustees and the independent trustees select and nominate other independent trustees. Persons who act as legal counsel to the independent trustees are independent legal counsel.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Exchange and Redemption will be effected by the transfer of a pro rata portion of the assets of TFIT to the Jones Fund; provided, however, securities restricted on disposition, certificated securities, odd lots and fractional shares will be excluded from the pro rata transfer.

2. The Assets will be valued for purposes of the Exchange and Redemption using the amortized cost method so long as the board of trustees of each of TFIT and the Jones Fund makes the findings required in rule 2a–7(c)(1) under the Act.

3. No brokerage commission, fee (except for customary transfer fees), or other remuneration will be paid in connection with the Exchange and Redemption.

4. TFIT will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Exchange and Redemption occurs, the first two years in an easily accessible place, a written record of the transaction setting forth a description of each security transferred, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5055 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27805]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 2, 2004.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 29, 2004 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 29, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

WGL, Holdings (70–10167)

WGL, Holdings, Inc. ("WGL"), a registered public utility holding company, WGL's utility subsidiary, Washington Gas Light Company ("Washington Gas"), WGL's nonutility subsidiaries, Crab Run Gas Company ("Crab Run"), Hampshire Gas Company ("Hampshire"), Washington Gas Resources Corporation ("WGRC"), American Combustion Industries, Inc. ("ACI"), Brandywood Estates, Inc. ("Brandywood"), WG Maritime Plaza I, Inc. ("WG Maritime"), Washington Gas Energy Services, Inc. ("WGEServices"), Washington Gas Energy Systems, Inc. ("WGESystems"), Washington Gas Consumer Services, Inc. ("Consumer Services") and Washington Gas Credit Corporation ("Credit Corp."), all located at 101 Constitution Avenue, NW., Washington, DC 20080 (collectively "Applicants"), have filed an application-declaration, as amended ("Application"), under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 13(b), 32, and 33 and rules 45(a), 45(c), 46, 53, and 54.

I. Background

WGL, through its subsidiaries, sells and delivers natural gas and provides a variety of energy-related products and services to customers in the metropolitan Washington, DC, Maryland, and Virginia areas. WGL's subsidiary, Washington Gas, is involved in the distribution and sale of natural gas that is predominantly regulated by State regulatory commissions. WGL, through its unregulated subsidiaries, offers energy-related products and services that are closely related to its core business. The majority of these energy-related activities are performed by wholly owned subsidiaries of Washington Gas Resources Corporation.

Washington Gas delivers and sells natural gas to customers in Washington, DC and adjoining areas in Maryland, Virginia and several cities and towns in the northern Shenandoah Valley of Virginia. Effective November 1, 2000, Washington Gas and its direct or indirect subsidiaries became subsidiaries of WGL, a holding company registered under the Act.

In addition to its regulated utility operations, WGL has three other wholly

owned subsidiaries: Crab Run, Hampshire, and WGRC. Crab Run is an exploration and production company whose assets are managed by an Oklahoma-based limited partnership. WGL's investment in this subsidiary and partnership is not material and management expects that future investments in Crab Run will be minimal. Hampshire is a regulated natural gas storage business that operates an underground storage field in the vicinity of Augusta, West Virginia. Hampshire serves Washington Gas under a tariff administered by the Federal Energy Regulatory Commission. WGRC owns the majority of the WGL's nonutility subsidiaries. WGRC's subsidiaries include ACI, Brandywood, WG Maritime, WGEServices, WGESystems, Consumer Services, and Credit Corp.

The term "Nonutility Subsidiaries" means each of the existing nonutility subsidiaries of WGL, and their respective subsidiaries, and any direct or indirect nonutility company acquired or formed by WGL or any Nonutility Subsidiary in the future in a transaction that has been approved by the Commission in this filing or in a transaction that is exempt under the Act. The term "Subsidiaries" means Washington Gas and the Nonutility Subsidiaries.

II. Current Request

Applicants request the following authorizations through March 31, 2007 ("Authorization Period"): (i) A program of external financing, (ii) intrasystem financing and credit support arrangements, and (iii) interest rate hedging measures.

III. Financing Parameters

A. General Terms and Conditions

Financing transactions with third parties will be subject to the following general terms and conditions, including, without limitation, securities issued for the purpose of refinancing or refunding outstanding securities of the issuer ("Financing Parameters").

1. Effective Cost of Money

The effective cost of capital on long-term debt ("Long-Term Debt"), preferred stock ("Preferred Stock"), preferred securities ("Preferred Securities"), equity-linked securities ("Equity-Linked Securities"), and short-term debt ("Short-term Debt") will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital (i) on any series of Long-term Debt exceed 500 basis points over a U.S. Treasury security having a remaining term equivalent to the term of the series, (ii) on any series of Preferred Stock, Preferred Securities or Equity-Linked Securities exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of the series, and (iii) on Short-term Debt exceed 300 basis points over the London Interbank Offered Rate ("LIBOR") for maturities of less than one year.

2. Maturity

The maturity of Long-term Debt will be between one and 50 years after the issuance thereof. Preferred Stock and Equity-Linked securities issued directly by WGL or a Financing Subsidiary may be perpetual in duration.

3. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Application will not exceed the greater of (i) 5% of the principal or total amount of the securities being issued or (ii) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

4. Common Equity Ratio

At all times during the Authorization Period, WGL and Washington Gas will maintain common equity of at least 30% of its consolidated capitalization (common equity, Preferred Stock, Long-Term Debt and Short-Term Debt); provided that WGL will in any event be authorized to issue common stock ("Common Stock") (including under stock-based plans maintained for shareholders, employees, and management) to the extent authorized in this filing.

5. Investment Grade Ratings

Applicants further represent that, except for securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than Common Stock, may be issued in reliance upon the authorization granted by the Commission under this Application unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer that are rated are rated investment grade; and (iii) all outstanding securities of the top level registered holding company that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934, as amended. Applicants request that the Commission reserve jurisdiction over the issuance of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

IV. WGL External Financing

WGL proposes to issue and sell from time to time during the Authorization Period, Common Stock and Preferred Stock and, directly or indirectly through one or more financing subsidiaries ("Financing Subsidiaries") (as described below), Long-Term Debt and other forms of Preferred Securities or Equity-Linked Securities in an aggregate amount not to exceed $300 million during the Authorization Period. In addition, WGL proposes to issue and reissue Short-Term Debt not to exceed $300 million principal amount outstanding at any time.

A. Common Stock

WGL proposes to issue and sell Common Stock through underwriting agreements of a type generally standard in the industry. Common Stock may be issued under private negotiation with underwriters, dealers or agents, as discussed below, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All Common Stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Although the Company has no present plans to issue Common Stock, if, for example, WGL Holdings were to issue $70 million of Common Stock at the closing price on January 30, 2004 of $27.95, it would result in an issuance of approximately 2.5 million shares. WGL also proposes to issue stock options, performance shares, stock appreciation rights ("SARs"), warrants, or other stock purchase rights that are exercisable for Common Stock and to issue Common Stock upon the exercise of the options, SARs, warrants, or other stock purchase rights.

B. Long-Term Debt, Preferred Stock and Other Preferred or Equity-Linked Securities

WGL seeks authority to issue its authorized Preferred Stock or, directly or indirectly through one or more Financing Subsidiaries, to issue Long-Term Debt and other types of Equity-Linked Securities (including, specifically, trust preferred securities). Applicants state that the proceeds of Long-Term Debt, Preferred Stock, or other Equity-Linked Securities would enable WGL to reduce Short-Term Debt with more permanent capital and provide an important source of future financing for the operations of and investments in non-utility businesses that are exempt under the Act.

Preferred Stock or other types Equity-Linked Securities may be issued in one or more series with such rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by WGL's board of directors. The dividend rate on any series of Preferred Stock or Equity-Linked Securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equivalent to the term of these securities. Dividends or distributions on Preferred Stock or Equity-Linked Securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Preferred Stock or other Equity-Linked Securities may be convertible or exchangeable into shares of Common Stock.

Applicants state that Long-Term Debt of WGL will be in the form of unsecured notes ("Debentures") issued in one or more series. The Debentures of any series (i) May be convertible into any other securities of WGL, (ii) will have a maturity ranging from one to 50 years, (iii) will bear interest at a rate not to exceed 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of such series of Debentures, (iv) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above or discounts below the principal amount thereof, (v) may be entitled to mandatory or optional sinking fund provisions, (vi) may provide for reset of the coupon under a remarketing arrangement, and (vii) may be called from existing investors or put to the company, or both. The Debentures will be issued under an indenture ("Indenture") to be entered into between WGL and a national bank, as trustee.[1]

C. Short-Term Debt

Applicants request authority for WGL to issue up to an aggregate principal amount of $300 million of Short-Term Debt during the Authorization Period. The effective cost of money on Short-Term Debt authorized in this Application will not exceed, at the time of issuance, 300 basis points over the London Interbank Offer Rate ("LIBOR") for maturities of one year or less. Applicants state that to provide financing for general corporate purposes, other working capital requirements and investments in new enterprises until long-term financing can be obtained, WGL may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally.

WGL also proposes to establish bank lines of credit in an aggregate principal amount sufficient to support projected levels of Short-Term Debt and to provide an alternative source of liquidity. Loans under these lines will have maturities not more than one year from the date of each borrowing. WGL may also engage in other types of Short-Term Debt within the limitations of the Financing Parameters, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of borrowing.

D. Financing by Washington Gas

Under rule 52(a), the long-term securities issued and sold by Washington Gas (including, specifically, Long-Term Debt and Preferred Stock) will be exempt from the pre-approval requirements of sections 6(a) and 7 of the Act because these securities will have been specifically approved by both the Virginia State Corporation Commission ("SCC–VA") and the Public Service Commission of the District of Columbia ("PSC–DC"), the agencies with regulatory authority over Washington Gas in the two jurisdictions in which it is incorporated. The issuance by Washington Gas of commercial paper and other short-term indebtedness having a maturity of less than 12 months will not be exempt under rule 52(a) since it is not subject to approval by both the SCC–VA and the PSC–DC.

Washington Gas requests approval to issue and sell from time to time during the Authorization Period Short-Term Debt in an aggregate principal amount outstanding at any one time not to exceed $350 million ("Washington Gas Short-Term Debt Limit"). Short-Term Debt could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to WGL, bank lines of credit and other debt securities. The effective cost of money on Washington Gas Short-Term Debt will not exceed at the time of issuance 300 basis points over LIBOR for maturities of one year or less.

E. Nonutility Subsidiary Financing

In order to be exempt under rule 52(b), any loan by WGL to a Nonutility Subsidiary or by one Nonutility Subsidiary to another must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. However, if a Nonutility Subsidiary making a borrowing is not wholly owned by WGL, directly or indirectly, and does not sell goods or services to Washington Gas, then the Applicants request authority to make loans to any associate company at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. Applicants state that, if WGL or a Nonutility Subsidiary were required to charge only its effective cost of capital on a loan to a less than wholly owned associate company when market rates were greater, the other owner(s) of associate company would in effect receive a subsidy from WGL or other lending Nonutility Subsidiary equal to the difference between the cost of providing the loan at its effective cost of capital and the other owner(s') proportionate share of the price at which it would have to obtain a similar loan on the open market.[2]

[1] WGL contemplates that the Debentures would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities that would resell the Debentures without registration under the 1933 Act in reliance upon one or more applicable exemptions from registration thereunder, or to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

[2] WGL states that it will include in the next certificate filed under rule 24 in this filing substantially the same information as that required on Form U–6B–2 with respect to any intrasystem loan transaction.

V. Guarantees

A. WGL Guarantees

WGL requests authorization to enter into guarantees and capital maintenance agreements, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, "WGL Guarantees") on behalf or for the benefit of any Subsidiary as may be appropriate to enable a Subsidiary to carry on in the ordinary course of its business, in an aggregate principal amount not to exceed $400 million outstanding at any one time. Subject to this limitation, WGL may guarantee both securities issued by and other contractual or legal obligations of any Subsidiary. In addition, WGL proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is determined by multiplying the amount of the WGL Guarantee provided by the cost of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding ("Guarantee Fee").

B. Nonutility Subsidiary Guarantees

In addition, Nonutility Subsidiaries request authority to provide guarantees and other forms of credit support ("Nonutility Subsidiary Guarantees") on behalf or for the benefit of other Nonutility Subsidiaries in an aggregate principal amount not to exceed $200 million outstanding at any one time, exclusive of any guarantees and other forms of credit support that are exempt pursuant to rule 45(b)(7) and rule 52(b). The Nonutility Subsidiary providing any credit support may charge its associate company a Guarantee Fee.

VI. Hedging Transactions

WGL Holdings, and to the extent not exempt pursuant to rule 52, the Subsidiaries, request authorization to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, or Fitch Inc.

Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets to manage the volatility of interest rates, including but not limited to interest rate swaps, swaptions, caps, collars, floors, forwards, rate locks, structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), and short sales of U.S. Treasury securities. Applicants would use Interest Rate Hedges as a means of prudently managing the risk associated with any outstanding debt by, for example, (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, or (iii) limiting the impact of changes in interest rates resulting from variable rate debt. The transactions would be for fixed periods and stated notional amounts, which in no case would exceed the principal amount of the underlying debt instrument. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets.

In addition, WGL Holdings and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Applicants state that Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury obligations ("Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations ("Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar, and/or other derivative or cash transactions, including, but not limited to structured notes, caps, and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. WGL Holdings or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. WGL Holdings or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases. All open positions under Anticipatory Hedges will be closed on or prior to the date of the new issuance and neither WGL Holdings nor any Subsidiary will, at any time, take possession or make delivery of the underlying U.S. Treasury Securities.

Applicants represent that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under U.S. generally accepted accounting principles.

VII. Money Pool

WGL and certain of the Subsidiaries request authorization to continue operating a system money pool ("Money Pool") as previously authorized by the Commission. To the extent not exempted by rule 52, the Subsidiaries request authorization to make unsecured short-term borrowings from the Money Pool and to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. WGL requests authorization to contribute surplus funds and/or to lend and extend credit to the participating Subsidiaries through the Money Pool. Subsidiaries participating in the Money Pool arrangement are Washington Gas, Crab Run, Hampshire, WGRC, WGEServices, WGESystems, ACI, Brandywood, Consumer Services, Credit Corp., and WG Maritime.

Under the terms of the Money Pool, short-term funds will be available from the following sources for short-term loans to the participating Subsidiaries from time to time: (1) Surplus funds in the treasuries of Money Pool participants other than WGL; (2) surplus funds in the treasury of WGL (together, "Internal Funds"); and (3) proceeds from bank borrowings and/or commercial paper sales by WGL or any Money Pool participant for loan to the Money Pool ("External Funds"). Funds will be made available from these sources in such order as WGL, as administrator of the Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of the companies providing funds to the pool. The determination of whether Washington Gas at any time has surplus funds to lend to the Money Pool or shall lend

funds to the Money Pool will be made by Washington Gas' chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in Washington Gas' sole discretion.

A participating Subsidiary that borrows from the Money Pool will borrow *pro rata* from each participant that lends, in the proportion that the total amount loaned by each lending Money Pool participant bears to the total amount then loaned through the Money Pool. On any day when both Internal Funds and External Funds with different rates of interest, are used to fund loans through the Money Pool, each borrower would borrow *pro rata* from each funding source in the Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Money Pool.

Proceeds of any short term borrowings from the Money Pool may be used by a participant: (i) For the interim financing of its construction and capital expenditure programs; (ii) for its working capital needs; (iii) for the repayment, redemption or refinancing of its debt and preferred stock; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) to otherwise finance its own business and for other lawful general corporate purposes. Washington Gas requests authority to borrow up to $350 million at any one time outstanding from the Money Pool. Borrowings by Washington Gas from the Money Pool will be counted against the Washington Gas Short-Term Debt Limit. WGL Holdings will not make any borrowings from the Money Pool.

VIII. Changes in Capital Stock of Subsidiaries

In order to accommodate the proposed transactions in this filing and to provide for future issues, Applicants request authorization to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by WGL or other intermediate parent company in the instant case. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any action by Washington Gas would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission(s) in the state or states in which Washington Gas is incorporated and doing business.

IX. Financing Subsidiaries

WGL and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of WGL and the Subsidiaries through the issuance of Long-Term Debt or Equity Securities, including but not limited to monthly income preferred securities, to third parties. Financing Subsidiaries would loan, dividend or otherwise transfer the proceeds of any financing to its parent or to other Subsidiaries, provided, however, that a Financing Subsidiary of Washington Gas will dividend, loan or transfer proceeds of financing only to Washington Gas. The terms of any loan of the proceeds of any securities issued by a Financing Subsidiary to WGL would mirror the terms of those securities. WGL may, if required, guarantee or enter into Expense Agreements in respect of the obligations of any Financing Subsidiary which it organizes. The Subsidiaries may also provide guarantees and enter into Expense Agreements under rules 45(b)(7) and 52, as applicable, if required on behalf of any Financing Subsidiaries which they organize. If the direct parent company of a Financing Subsidiary is authorized in this proceeding or any subsequent proceeding to issue Long-Term Debt or similar types of equity securities, then the amount of the securities issued by that Financing Subsidiary would count against the limitation applicable to its parent for those securities. In these cases, however, the Guarantee by the parent of the security issued by its Financing Subsidiary would not be counted against the limitations on WGL Guarantees or Nonutility Subsidiary Guarantees. In other cases, in which the parent company is not authorized to issue similar types of securities, the amount of any Guarantee not exempt under rules 45(b)(7) and 52 that is entered into by the parent company with respect to securities issued by its Financing Subsidiary would be counted against the limitation on WGL Holdings Guarantees or Nonutility Subsidiary Guarantees, as the case may be.

Applicants state that any affiliate transactions entered into by a Financing Subsidiary in connection with an Expense Agreement would be conducted at fair market value without regard to cost, and therefore, Applicants request an exemption under section 13(b) from the at cost standards of rules 90 and 91 for WGL Holdings and the Subsidiaries to enter into these transactions.

X. Intermediate Subsidiaries

WGL requests authority to acquire, directly or indirectly through a Nonutility Subsidiary, the securities of one or more new subsidiary companies ("Intermediate Subsidiaries") which may be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more exempt wholesale generators ("EWGs"), as defined in section 32 of the Act, foreign utility companies ("FUCOs"), as defined in section 33 of the Act, or exempt telecommunication companies ETCs ("Exempt Telecommunication Companies"), exempt companies under rule 58 ("Rule 58 Companies"), or other non-exempt Nonutility Subsidiaries (as authorized in this proceeding or in a separate proceeding).[3] WGL also requests authority for Intermediate Subsidiaries to provide management, administrative, project development, and operating services to these entities at fair market prices determined without regard to cost, and requests an exemption (to the extent that rule 90(d) does not apply) pursuant to section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the Nonutility Subsidiary purchasing such goods or services is:

(i) A FUCO or foreign EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) an EWG that sells electricity at market-based rates, that have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not Washington Gas;

(iii) a "qualifying facility" ("QF"), within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), that sells electricity exclusively (a) at rates negotiated at arm's length to one or more industrial or commercial customers purchasing electricity for their own use and not for resale, and/or (b) to an electric utility company (other than Washington Gas) at the purchaser's "avoided cost," as determined in accordance with PURPA regulations;

(iv) a domestic EWG or QF that sells electricity at rates based upon its cost of

[3] WGL does not hold an interest in any EWG, FUCO or ETC at this time.

service, as approved by FERC or any state public-utility commission having jurisdiction, provided that the purchaser is not Washington Gas; or

(v) a Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially owned by WGL, provided that the ultimate purchaser of the goods or services is not a Washington Gas (or any other entity within the WGL system whose activities and operations are primarily related to the provision of goods and services to Washington Gas), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries, described in clauses (i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the U.S. and is not a public-utility company operating within the U.S.

Applicants state that an Intermediate Subsidiary may be organized, among other things: (i) In order to facilitate the making of bids or proposals to develop or acquire an interest in any Exempt Company, Rule 58 Company, or other non-exempt Nonutility Subsidiary, (ii) after the award of such a bid proposal, in order to facilitate closing on the purchase or financing of the acquired company, (iii) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by WGL Holdings and non-affiliated investors, (iv) to facilitate the sale of ownership interests in one or more acquired nonutility companies, (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals, (vi) as a part of tax planning in order to limit WGL Holdings' exposure to U.S. and foreign taxes, (vii) to further insulate WGL Holdings and Washington Gas from operational or other business risks that may be associated with investments in nonutility companies, or (viii) for other lawful business purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates, or other forms of equity interests, (ii) capital contributions, (iii) open account advances with or without interest, (iv) loans, and (v) guarantees issued, provided, or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Applicants state, further, that funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (i) Financings authorized in this proceeding, (ii) any appropriate future debt or equity securities issuance authorization obtained by WGL from the Commission, and (iii) other available cash resources, including proceeds of securities sales by a Nonutility Subsidiary under rule 52.[4]

WGL Holdings may, from time to time, to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to such investments, under one or more Intermediate Subsidiaries. To effect a consolidation or other reorganization, WGL Holdings may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary or sell (or cause a Nonutility Subsidiary to sell) the equity securities of one Nonutility Subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or rules thereunder, WGL Holdings hereby requests authorization under the Act to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries WGL Holdings' ownership interests in existing and future Nonutility Subsidiaries. These transactions may take the form of a Nonutility Subsidiary selling, contributing or transferring the equity securities of a subsidiary as a dividend to an Intermediate Subsidiary, and Intermediate Subsidiaries acquiring, directly or indirectly, the equity securities of companies, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for a consideration equal to the book value of the equity securities being sold. WGL Holdings will report each transaction in the next quarterly certificate filed under rule 24 in this proceeding, as described below.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5111 Filed 3–5–04; 8:45 am]

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[4] To the extent that WGL provides funds or guarantees directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Company, Applicants state that the amount of the funds or guarantees will be included in WGL's "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49344; File No. SR–Amex–2003–111]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Relating to Listing and Delisting Appeal Hearing Fees

March 1, 2004.

On December 12, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Sections 1203, 1204 and 1205 of the Amex *Company Guide* to increase the fees applicable to issuers requesting review of a determination to limit or prohibit the initial or continued listing of their securities. The proposed rule change was published for comment in the **Federal Register** on January 29, 2004.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[4] Specifically, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(5)[5] in that the proposal is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49116 (January 22, 2004), 69 FR 4334.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[6] The Commission believes that the increase in appeal fees should address increasing costs to maintain overall revenue neutrality of the Exchange's hearing fee structure.

In addition, the Commission believes that requiring issuers to satisfy outstanding listing fees prior to obtaining review of a Listing Qualifications Staff decision is reasonable, and may help to promote orderly and efficient operation of the Exchange. The Commission also believes that clarifying Sections 1203 and 1204 of the Amex *Company Guide* to specify that issuers submit hearing requests to the Amex Office of General Counsel should improve administrative efficiency, consistent with Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–2003–111) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5051 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49346; File No. SR–BSE–2003–31]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Order Granting Approval of Proposed Rule Change to Extend Trading Hours From 8 a.m. Until 9:28 a.m., and From 4:16 p.m. Until 6:30 p.m. to Allow for the Execution of Matched Orders Only

March 1, 2004.

On December 22, 2003, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the execution of matched orders, specifically designated and submitted with a contra order matched in price and size, outside of the regular 9:30 a.m. to 4 p.m. Primary Session, and the 4:01 p.m. to 4:15 p.m. Post Primary Session.[3] The proposed rule change was published for comment in the **Federal Register** on January 28, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[5] and in particular, the requirements of Section 6(b)(5) of the Act[6] and the rules and regulations thereunder. The Commission believes that extending trading hours from 8 a.m. until 9:28 a.m., and from 4:16 p.m. until 6:30 p.m. to allow for the execution of matched orders, specifically designated and submitted with a contra order matched exactly as to security, size, price, and time of entry, is reasonably designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Exchange shall designate trades executed and reported outside of the Primary Session as .T trades. Further, the Commission notes that the Exchange shall not permit its members to accept any orders for execution outside of the Primary Session without making certain customer disclosures, and shall retain any orders, not specifically designated for execution outside the Primary Session, for entry into the Primary Session upon execution eligibility at 9:30 a.m.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–BSE–2003–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5052 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49343; File No. SR–CBOE–2003–58]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Its Summary Fine Schedule for Position Limit Violations

March 1, 2004.

On December 10, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its summary fine schedule for position limit violations under CBOE's minor rule violation plan.

The proposed rule change was published for comment in the **Federal Register** on January 23, 2004.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5)[6] of the Act which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with Rule 19d–1(c)(2), which governs minor rule violation plans. The Commission believes that the proposed rule change should enable the Exchange to deal more efficiently with position limit violations and inadvertent position limit overages. In addition, the Commission believes that the proposed rule change should allow the Exchange to appropriately discipline its members

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[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All times listed herein are Eastern time.

[4] *See* Securities Exchange Act Release No. 49117 (January 22, 2004), 69 FR 4186.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49078 (January 14, 2004), 69 FR 3402.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

and persons associated with its members for position limit violations.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the CBOE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2003–58) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5053 Filed 3–5–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49349; File No. SR–NASD–2003–149]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SuperMontage and ITS Securities

March 2, 2004.

I. Introduction

On October 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to enhance the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to enable Nasdaq to trade via SuperMontage, all securities that are eligible for trading via the Intermarket Trading System ("ITS Securities"). The proposed rule change was published for comment in the **Federal Register** on October 28, 2003.[3] The Commission received no comment letters with respect to the proposal.

On February 13, 2004, Nasdaq amended the proposed rule change.[4] This order approves the proposed rule change, solicits comments on Amendment No. 1 to the proposed rule change, and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal and Amendment No. 1 Thereto

Nasdaq submitted the proposed rule change to replace its current Computer Assisted Execution System ("CAES") with SuperMontage for the trading of all ITS Securities on Nasdaq. Under the proposal, NASD members will trade ITS Securities using the SuperMontage functionality that the Commission has previously approved for the trading of Nasdaq-listed securities, with certain modifications needed to ensure that NASD members continue to comply with all pre-existing NASD and Commission rules governing the trading of ITS Securities.

After the proposed rule change was published for comment in the **Federal Register**, Nasdaq submitted Amendment No. 1 to the proposed rule change, in order to address informal feedback from participants in the ITS Plan and comments from Division staff. Specifically, Amendment No. 1: (1) Clarifies that an odd-lot share amount will be cancelled if it represents the only interest for an ITS Market Maker at a given price level; (2) establishes that Nasdaq would begin processing locked/crossed markets at 9:30 a.m.; (3) describes how SuperMontage processing in ITS Securities will occur between 4 and 6:30 p.m.; (4) describes how Nasdaq will surveil for compliance with the ITS Plan and the NASD's rule against locked and crossed markets; (5) clarifies which order types will be functional in the proposed rule change; (6) increases from five seconds to seven seconds, the time for an ITS/CAES Market Maker to respond to a delivered order before that delivery will be canceled; (7) further specifies the functionality of IM Prime, the data-feed that Nasdaq proposes to use for the dissemination of information about quotes and orders for ITS Securities in SuperMontage; (8) identifies the measures Nasdaq has instituted to assure proper surveillance and compliance with ITS rules; and (9) provides further detail on Nasdaq's planned implementation schedule. The language of the proposed rule text, as amended, is attached as Exhibit A.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–149. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–149 and should be submitted by March 29, 2004.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48674 (October 21, 2003), 68 FR 61508.

[4] *See* letter from Jeff Davis, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 12, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq addressed staff comments relating to the implementation and procedures of the proposal. *See* Section II *infra.*

and regulations thereunder applicable to a national securities association.[5] In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,[6] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission believes that replacing CAES with the SuperMontage functionality, Nasdaq's integrated execution system, should enhance the trading of ITS Securities trading on Nasdaq.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[7] In Amendment No. 1, Nasdaq further clarified the proposal by addressing substantive concerns raised by the ITS Participants and procedural concerns raised by Division staff. Granting accelerated approval to the filing as amended, will enable the NASD to provide the SuperMontage functionality without further delay. The Commission believes that there is no reason to delay implementation of these changes.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, section 15A(b)(6) of the Act.[8]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–2003–149) be approved, and that Amendment No. 1 be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

Proposed new language is *italicized;* proposed deletions are in [brackets].

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

Exhibit A

4700. NASDAQ National Market Execution System (NNMS)

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker *or ITS/CAES Market Maker* is currently active in NNMS.

(b) Reserved.

(c) The term "Attributable Quote/Order" shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's [MMID] *MPID* in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For ITS/CAES Market Makers, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MPID once such Quote/Order becomes the participant's best attributable bid or offer.

[(2)](*3*) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's [MMID] *MPID* in the Nasdaq Quotation Montage.

(d) The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc., which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

(e) The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker elects to utilize the Quote Refresh Functionality and does not designate to Nasdaq an alternative refresh size, which must be at least one normal unit of trading. The automatic refresh size default amount shall be 1,000 shares.

(f) The term "Directed Order" shall mean an order *in a Nasdaq-listed security* that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the "Preferenced Order" described in subparagraph (aa) of this rule. *Directed Orders shall not be available for ITS Securities.*

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants or NNMS Order Entry Firms. *NNMS Order Entry firms are not permitted to enter Displayed Quotes/Orders in ITS Securities.*

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.

(i) The term "Immediate or Cancel" shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(l) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term "marketable limit order" shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term "Non-Attributable Quote/Order" shall mean*:*

(1) for orders in Nasdaq-listed securities, a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant or NNMS Order Entry Firm and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility. UTP Exchanges may submit Non-Attributable Quote/Order(s) in conformity with Rule 4710(e).

(2) for orders in ITS Securities, a bid or offer Quote/Order that is entered by an ITS/CAES Market Maker and is designated for display (price and size) and/or execution on an anonymous basis. NNMS Order Entry Firms shall be eligible to enter Non-Attributable orders in ITS Securities only if they are designated as Immediate or Cancel or Total Immediate or Cancel.

(p) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS Participant and is not directed to any particular Quoting Market Participant *or ITS Exchange*, and shall also include Preferenced Orders as described in subparagraph (aa) of this rule.

(q) The term "Non-Liability Order" shall mean *for Nasdaq listed securities* an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

(r) The term "Nasdaq National Market Execution System," "NNMS," or "system" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the *appropriate* National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

(s) The term "NNMS eligible securities" shall mean designated Nasdaq-listed equity securities *and ITS Securities. ITS Securities shall include all securities included in NASD Rule 5210(c) and NASD Rule 6410(d).*

(t) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more *Nasdaq listed* [NNMS eligible] securities.

(1) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(2) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders that are Liability Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(u) The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more *Nasdaq listed* [NNMS eligible] securities, and is currently active in NNMS and obligated to execute orders through the automatic-execution functionality of the NNMS system for the purchase or sale of an active *Nasdaq listed* [NNMS] security at the Nasdaq inside bid and/or offer price.

(v) The term "NNMS Participant" shall mean an NNMS Market Maker, NNMS ECN, UTP Exchange, [or] *ITS/CAES Market Maker, or* NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

(w) The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of *entering orders in NNMS Securities into NNMS* [participation in NNMS]. This term shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623. NNMS Order Entry Firms shall not charge any fee to a broker-dealer that accesses the NNMS Order Entry Firm's quote/order through NNMS.

(x) The term "Nasdaq Quotation Montage" shall mean the portion of the Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the [MMID] *MPIDs* for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related [MMID] *MPID.*

(y) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; [or] (2) NNMS ECNs;[.] *and (3) ITS/CAES Market Makers.*

(z) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(aa) The term "Preferenced Order" shall mean an order that is entered into the Non-Directed Order Process and is designated to be delivered to or executed against a particular Quoting Market Participant's Attributable Quote/Order if the Quoting Market Participant is at the best bid/best offer when the Preferenced Order is the next in line to be executed or delivered. Preferenced Orders shall be executed subject to the conditions set out in Rule 4710(b).

(bb) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant or, *for Nasdaq securities,* NNMS Order Entry Firm that is displayed in the form of a single quotation. *For ITS Securities, orders entered by NNMS Order Entry Firms are not displayed.* Unless specifically referring to a UTP Exchange's agency Quote/Order (as set out in Rule 4710([f]*e*)(2)(b)), when this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(cc) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; [and] (3) UTP Exchange Specialists, *and (4) ITS/CAES Market Makers.*

(dd) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant or NNMS Order Entry Firm to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is reduced by executions to less than a normal unit of trading.

(ee) The term "Nasdaq Order Display Facility" shall mean, *in Nasdaq listed securities,* the portion of the Nasdaq WorkStation presentation that displays, without attribution to a particular Quoting Market Participant's [MMID] *MPID,* the five best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(ff) The term "UTP Exchange" shall mean any registered national securities exchange that elects to participate in the NNMS and that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For [Exchange-Listed] Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

(gg) The term "Legacy Quote" shall mean the quotation mechanism that existed in Nasdaq on or before July 1, 2002, and that does not permit the entry of Quotes/Orders at multiple price levels in the NNMS.

(hh) The term "Day" shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4 p.m. Eastern Time), after which it shall be returned to the entering party.

(ii) The term "Good-till-Cancelled" shall mean, for orders so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(jj) The term "End-of-Day" shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential execution and/or display until market close (4 p.m. Eastern Time), and thereafter for potential execution until 6:30 p.m. Eastern Time, after which it shall be returned to the entering party. *End-of-Day orders shall not be available for ITS Securities.*

(kk) The term "Auto Ex" shall mean for orders *in Nasdaq listed securities* so designated, an order that will execute solely against the Quotes/Orders of NNMS Participants that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

(ll) The term "Fill or Return" shall mean for orders in ITS Securities so designated, an order that is entered by an ITS/CAES Market Maker and delivered to or executed by NNMS Participants without delivering the order to an ITS Exchange and without trading through the quotations of ITS Exchanges. The System will, if necessary, execute against interest at successive price levels.

(mm) The term "Pegged" shall mean, for orders so designated, that after entry into the NNMS, the price of the order is automatically adjusted by NNMS in response to changes in the Nasdaq inside bid or offer, as appropriate. The price of a Pegged Order may be equal to the inside quote on the same side of the market (a Regular Pegged Order) or may be equal to a specified amount better than the inside quote on the contra side of the market (a Reverse Pegged Order). The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be converted into an un-pegged limit order. *Pegged Orders shall not be available for ITS Securities.*

(nn) *(1)* The term "Discretionary" shall mean, for priced limit orders *in Nasdaq listed securities* so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The displayed price may be fixed or may be pegged to equal the inside quote on the same side of the market. The pegging of the Discretionary Order may be capped in the same manner as that of a Pegged Order. The discretionary price range of a Discretionary Order that is pegged will be adjusted to follow the pegged displayed price.

(2) for orders in ITS Securities so designated, an order that when entered into NNMS has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The display price must be fixed. A Discretionary Order in an ITS Security may not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is designated as a Sweep Order.

(oo) Reserved.

(pp) The term "ITS/CAES Market Maker" shall mean a member of the Association that is registered as an ITS/CAES Market Maker as defined in NASD Rule 5210(e) or as a CQS Market Maker as defined in NASD Rule 6320 and as a Market Maker for purposes of participation in NNMS with respect to one or more ITS Securities, and is currently active in NNMS. ITS/CAES Market Makers shall be permitted to execute orders in ITS Securities through the automatic execution or order delivery functionality of the NNMS system for the purchase or sale of active ITS Securities.

(qq) The term "ITS Exchange" shall mean a national securities exchange that participates in the ITS system as defined in Rule 5210(a). ITS Exchanges shall not be eligible to participate in the NNMS. ITS Commitments sent by ITS Exchanges shall be processed by the system in accordance with the ITS Plan and all applicable NASD rules governing the participation in ITS. Quotes/Orders that are eligible for ITS will be processed by the system and delivered to the appropriate ITS Exchange as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable NASD rules.

(rr) The term "Sweep Order" shall mean, for orders in ITS Securities so designated, an order that may be entered only by ITS/CAES Market Makers and that may be delivered to or executed only by NNMS Participants at multiple price levels and that may trade through ITS Exchanges' quotations.

(ss) The term "Total Day" shall mean, for orders in ITS Securities so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between 9:30 a.m. and 6:30 p.m., after which it shall be returned to the entering party.

(tt) The term "Total Good-till-Cancelled" shall mean, for orders in ITS Securities so designated, that if after entry into NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display between 7:30 a.m. and 6:30 p.m. and for potential execution between 9:30 a.m. and 6:30 p.m., until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(uu) The term "Total Immediate or Cancel" shall mean, for limit orders in ITS Securities so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. Such orders may be entered between 7:30 a.m. and 6:30 p.m. and are available for potential execution between 9:30 a.m. and 6:30 p.m.

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with a participant of a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker or to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and

settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission that maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(d) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) the execution of an NNMS Participant application agreement with the Association;

(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS-compared trades may be settled;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(e) *Participation in NNMS as an ITS/CAES Market Maker shall be conditioned upon the ITS/CAES Market Maker's initial and continuing compliance with the requirements set forth in NASD Rule 5220.*

([e]*f*) The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

([f]*g*) Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

([g]*h*) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by NNMS Market Participants:

(A) An NNMS Participant may enter into the NNMS a Non-Directed Order in order to access the best bid/best offer as displayed in Nasdaq.

(B) A Non-Directed Order must be a market or limit order, must indicate whether it is a buy, short sale, short-sale exempt, or long sale, and may be designated as "Immediate or Cancel", [or as a] "Day", [or a] "Good-till-Cancelled", *"Auto-Ex", "Fill or Return", "Pegged", "Discretionary", "Sweep", "Total Day", "Total Good till Cancelled", or "Total Immediate or Cancel"* [order].

(1) If a priced order designated as "Immediate or Cancel" ("IOC") is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

(2) If a priced order designated as a "Day" order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 4 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(3) If the order is designated as "Good-till-Cancelled" ("GTC"), the order (or unexecuted portion thereof) will be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first.

(4) Starting at 7:30 a.m., until the 4 p.m. market close, IOC and Day Non-Directed Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. GTC orders may be entered (or previously entered GTC orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time, but such orders entered prior to market open, or GTC orders carried over from previous trading days, will not become available for execution until 9:30 a.m. Eastern Time. Exception: *For Nasdaq listed securities only,* Non-Directed Day (other than Pegged and Discretionary Orders) and GTC orders may be executed prior to market open if required under Rule 4710(b)(3)(B).

(5) for *Nasdaq listed securities,* [A]*a*n order may be designated as "Auto-Ex," in which case the order will also automatically be designated as IOC. An Auto-Ex Order will execute solely against the Quotes/Orders of NNMS Participants at the best bid/best offer that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS.

(6) for ITS Securities, an order may be designated as "Fill or Return," in which case it shall be executed solely against the Quotes/Orders of NNMS Participants at the best bid/best offer within NNMS. The NNMS will, if necessary, execute against interest at successive price levels. A Fill or Return Order will not trade through the quotation of an ITS Exchange.

(7) [In addition, an order may be assigned the designations described below.] An order may be designated as "Pegged," in which case the order will also automatically be designated as Day. A Pegged Order may not be designated

as a Preferenced Order. A Pegged Order (or unexecuted portion thereof) will be retained by NNMS and its price adjusted in response to changes in the Nasdaq inside market. A Pegged Order (including a Discretionary Order that is pegged) will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30 a.m., until the 4 p.m. market close, Pegged Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. The initial price of Pegged Orders (including Discretionary Orders that are pegged) entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer at that time. *Pegged Orders shall not be available for ITS Securities.*

To maintain the capacity and performance of the NNMS, Nasdaq may at any time suspend the entry of Pegged Orders (including Discretionary Orders that are pegged) for all securities or for any security. Pegged Orders that are in the NNMS at the time of such suspension will continue to be available for adjustment and execution.

(8)(A) An order may be designated as "Discretionary", in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferenced Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. If a Discretionary Order is pegged, its displayed price will be adjusted in response to changes in the Nasdaq inside market. Starting at 7:30 a.m., until the 4 p.m. market close, Discretionary Orders may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by NNMS at market open.

(B) A Discretionary Order in an ITS Security may not be preferenced to an ITS/CAES Market Maker or ITS Exchange, shall not result in a quote that locks or crosses the national best bid and offer and shall not be executed at a price that trades through the quotation of an ITS Exchange unless it is also designated as a Sweep Order. Starting at 7:30 a.m., until the 4 p.m. market close, Discretionary Orders in ITS Securities may be entered into NNMS (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by NNMS at market open.

(9) An order in an ITS Security may be designated as a "Sweep Order." A Sweep Order may be entered only by an ITS/CAES Market Maker. A Sweep Order may trade through the quotations of ITS Exchanges, and it will be delivered to or executed only by NNMS Participants at multiple price levels.

(10) An order in an ITS Security may be designated as "Total Day" ("X") and may be entered between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m. If a priced X order is not immediately executable, the unexecuted order (or portion thereof) shall be retained by NNMS and remain available for potential display/execution until it is cancelled by the entering party, or until 6:30 p.m. Eastern Time on the day such order was submitted, whichever comes first, whereupon it will be returned to the sender.

(11) An order in an ITS Security may be designated as "Total Good-till-Cancelled" ("GTX"). A GTX order (or unexecuted portion thereof) shall be retained by NNMS and remain available for potential display/execution until cancelled by the entering party, or until 1 year after entry, whichever comes first. GTX orders may be entered (or previously entered GTX orders cancelled) between the hours 7:30 a.m. to 6:30 p.m. Eastern Time and are available for potential execution beginning at 9:30 a.m.

(12) An order in an ITS Security may be designated as "Total Immediate or Cancel" ("IOX"). IOX orders may be entered beginning at 7:30 a.m. until 6:30 p.m. and are available for potential execution throughout the trading day beginning at 9:30 a.m. If a priced order designated as IOX and entered prior to 9:30 a.m. is not immediately executable at 9:30 a.m., the unexecuted order (or portion thereof) shall be returned to the sender. If a priced order designated as IOX and entered between 9:30 a.m. and 6:30 p.m. is not immediately executable, the unexecuted order (or portion thereof) shall be returned to the sender.

(C) The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350 *or, in the case of ITS Securities, SEC Rule 10a–1.*

(D) Non-Directed Orders will be processed as described in Rule 4710.

(E) The NNMS shall not accept Non-Directed Orders that are All-or-None, or have a minimum size of execution.

(F) A NNMS Market Participant may enter a Non-Directed Order that is either a market order or a limit order prior to the market's open. Market orders and limit orders designated as Immediate or Cancel and *limit orders designated as Total Immediate or Cancel* and Discretionary Orders whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed orders shall be held in a time-priority queue that will begin to be processed by NNMS at market open. If an Immediate or Cancel limit order is unmarketable at the time it reaches the front of time-priority processing queue, it will be returned to the entering market participant. Limit orders that are not designated as Immediate or Cancel orders shall be retained by NNMS for potential display in conformity with Rule 4707(b) and/or potential execution in conformity with Rule 4710(b)(1)(B).

(2) Entry of Non-Directed Orders by NNMS Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by NNMS Order-Entry Firms:

(A)

(i) All Non-Directed orders *in Nasdaq listed securities* shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. NNMS Order Entry Firms may designate orders as "Pegged" or "Discretionary," in which case the order will also automatically be designated as Day. For IOC orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(ii) In ITS Securities, all Non-Directed orders shall be designated as Immediate or Cancel, GTC, Day, Total Immediate or Cancel, Total Day, or Total GTC but shall be required to be entered as Non-attributable if not entered as IOC or IOX. NNMS Order Entry Firms may only assign the IOC, IOX, and Fill or Return and Discretionary order designations

described in subparagraph (a)(1)(B). For IOC and IOX orders, if after entry into the NNMS of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(B) A Non-Directed Order that is either a market or limit order may be entered prior to the market's open. Limit and market orders designated as Immediate or Cancel and Discretionary Orders *or, in the case of ITS Securities, IOX,* whose displayed price or discretionary price range would lock or cross another Quote/Order if they were displayed will be held in a time-priority queue that will begin to be processed at market open. A limit order that is designated as IOC *or, in the case of ITS Securities, IOX* and is not marketable at the time it reaches the front of the time-priority processing queue will be returned to the entering participant.

(b) Directed Orders *in Nasdaq-listed Securities.* A participant may enter a Directed Order *in a Nasdaq-listed security* into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an "All-or-None" order ("AON") that is at least one normal unit of trading (*e.g.* 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(C) a Directed Order that is entered at a price that is inferior to the Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of 3 to 99 minutes, or may be designated as "Day" order, or an "End of Day" order.

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(4) A Directed Order entered into the system may not be cancelled until a minimum of five seconds has elapsed after the time of entry. This five-second time period shall be measured by NNMS.

(5) Directed Orders shall not be entered in ITS Securities.

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—

(1) In Nasdaq-listed securities, [A]any order in whole shares up to 999,999 shares may be entered into the NNMS for normal execution processing.

(2) Orders in ITS Securities must be entered for a minimum of one round lot, or in round lot multiples, or in mixed lots. Orders in ITS Securities will be delivered to ITS Exchanges in round lots only.

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS, and NNMS Order Entry Firms may enter Non-Attributable Orders into the NNMS, subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether it is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable). NNMS Order Entry Firms shall be permitted to transmit to NNMS multiple Non-Attributable Quotes/Orders at a single as well as multiple price levels and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b). For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase. When a Pegged Order (including a Discretionary Order that is pegged) is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display Quotes/Orders submitted to the system as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's [MMID] *MPID,* and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's and NNMS Order Entry Firm's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market. A Non-Attributable Quote/Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's [MMID] *MPID.* Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an

anonymous [MMID] *MPID*, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee) on either side of the market.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Odd-lots, Mixed Lots, and Rounding—The [Nasdaq system] *NNMS* (and all accompanying data feeds) shall be capable of displaying trading interest in round lot amounts. For quote display purposes, [Nasdaq] *NNMS* will aggregate all shares, including odd-lot share amounts, entered by a Quoting Market Participant and NNMS Order Entry Firm at a single price level and then round that total share amount down to the nearest round-lot amount for display and dissemination, consistent with subparagraphs (b)(1) and (b)(2) of this rule. Though rounded, any odd-lot portion of a Quote/Order that is not displayed as a result of this rounding process will remain in the system, with the time-priority of their original entry, and be continuously available for execution. Round-lots that are subsequently reduced by executions to a mixed lot amount will likewise be rounded for display purposes by the system to the nearest round-lot amount at that same price level. Any odd-lot number of shares that do not get displayed as a result of this rounding will remain in the system with the time-priority of their original entry and thus be continuously available for execution. If executions against an Attributable Quote/Order result in there being an insufficient (odd-lot) amount of shares at a price level to display an Attributable Quote/Order for one round-lot, the system will display the Quoting Market Participant's next best priced Attributable Quote/Order consistent with Rule 4710(b)(2). If all Attributable Quotes/Orders on the bid and/or offer side of the market are exhausted so that there are no longer any Attributable Quotes/Orders, the system may refresh a market maker's exhausted bid or offer quote using the process set forth in Rule 4710(b)(5). With the exception of Legacy Quotes, odd-lot remainders that are not displayed will remain in the system at their original price levels and continue to be available for execution.

(B) Aggregation and Display of Odd-lots Bettering the Inside Price—*Except as provided in Subsection (C) below,* odd-lot share amounts that remain in system at prices that improve the best bid/offer in Nasdaq shall be subject to aggregation for display purposes, via the SIZE [MMID] *MPID*, with the odd-lot share amounts of other NNMS Quoting Market Participants and NNMS Order Entry Firms at those same price level(s). Such odd-lots will be displayed via SIZE if (1) the combination of all such odd-lots at a particular price level is equal to, or more than, a round-lot and (2) that the price level represents either the highest bid or lowest offer price within the system. This aggregation shall display only the maximum round-lot portion of the total combined shares available at that best-priced level. This aggregation shall be for display purposes only and all individual odd-lot share amounts that are part of any such aggregation shall continue to processed by the system based on the time-priority of their original entry.

(C) In the case of ITS Securities, odd lot share amounts of each individual ITS/CAES Market Maker shall be aggregated and shall be displayed next to that ITS/CAES Market Maker's MPID for a minimum of one round lot or for round lot multiples. An odd lot share amount will be cancelled if it represents an ITS/CAES Market Maker's best priced quote or order within SuperMontage. Odd lot share amounts will be cancelled at the end of the day.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The "Summary Scan" functionality, [which] is a query-only non-dynamic functionality *for Nasdaq listed securities only. It* [that] displays without attribution to Quoting Market Participants' [MMIDs] *MPIDs* the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee).

(e) NQDS Prime—"NQDS Prime" is a separate data feed *for Nasdaq-listed securities* that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to Quoting Market Participants' [MMIDs] *MPIDs* all Attributable Quotes/Orders on both the bid and offer side of the market for the price levels that are disseminated in the Nasdaq Order Display Facility.

(f) IM Prime—"IM Prime" is a separate data feed that Nasdaq will make available for a fee that is approved by the Securities and Exchange Commission. This separate data feed will display with attribution to ITS/CAES Market Makers' MPIDs all Attributable Quotes/Orders on both the bid and offer side of the market for all price levels within SuperMontage for ITS Securities

4708 ITS Commitments

(a) Compliance with Rule 5200 Series.

(1) Pre Opening Application. ITS/CAES Market Makers may use NNMS to participate in the Pre Opening Application in accordance with Rule 5250. NNMS Order Entry Firms may not participate in the Pre Opening Application.

(2) Trade throughs. ITS/CAES Market Makers must use NNMS to comply with the trade through obligations set forth in Rules 5262 and 5264. The NNMS will reject any order of an NNMS Order Entry Firm that, if executed, would trade through an ITS Exchange.

(3) Locked and Crossed Markets. ITS/CAES Market Makers must use NNMS to comply with the locked and crossed markets obligations set forth in Rules 5263. Any order or portion thereof entered by an NNMS Order Entry Firm that would create a locked/crossed market with an ITS Exchange will be rejected.

(b) Inbound ITS Commitments.

(1) If the ITS Commitment contains an obvious error as described in Rule 5265(b), the NNMS will decline it.

(2) If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a–1, the NNMS will decline it.

(3) If the conditions described in subparagraphs (1) and (2) above do not apply, the NNMS will execute or deliver an inbound ITS Commitment in accordance with applicable provisions of the Rule 5200 Series and the ITS Plan.

4710. Participant Obligations in NNMS

(a) Registration Upon the effectiveness of registration as a NNMS Market Maker, NNMS ECN, *ITS/CAES Market Maker* or NNMS Order Entry Firm, the NNMS Participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) Obligations [F]*for* each NNMS security in which it is registered, a Quoting Market Participant must accept and execute individual Non-Directed Orders against its quotation, in an amount equal to or smaller than the combination of the Displayed Quote/Order and Reserve Size (if applicable) of such Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq. This obligation shall also apply to the Non-Attributable Quotes/Orders of NNMS Order Entry Firms. Quoting Market Participants, and NNMS Order Entry Firms, shall participate in the NNMS as follows:

(i) NNMS Market Makers, NNMS Auto-Ex ECNs, and NNMS Order Entry Firms to the extent they enter a Non-Attributable Quote/Order shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) ITS/CAES Market Makers may elect to participate in the order delivery or the automatic execution functionality of the NNMS. ITS/CAES Market Makers that elect automatic execution shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size. ITS/CAES Market Makers that elect order delivery shall accept the delivery of an order up to the size of the ITS/CAES Market Maker's Displayed Quote/Order and Reserve Size. ITS/CAES Market Maker that elect order delivery shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ITS/CAES Market Maker's system, in which case the ITS/CAES Market Maker is required to execute in a size equal to the remaining amount of trading interest available in the ITS/CAES Market Maker's system.

[(ii)] *(iii)* NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute the full size of such order (even if the delivered order is a mixed lot or odd lot) unless that interest is no longer available in the ECN, in which case the ECN is required to execute in a size equal to the remaining amount of trading interest available in the ECN.

[(iii)] *(iv)* UTP Exchanges that choose to participate in the NNMS shall do so as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received. Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithm described below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) Execution Algorithm—Price/Time—The system will access interest in the system in the following priority and order:

a. Displayed Quotes/Orders of NNMS Market Makers, *ITS/CAES Market Makers,* and NNMS ECNs, displayed Non-Attributable Quotes/Orders of NNMS Order Entry Firms, and displayed non-attributable agency Quotes/Orders of UTP Exchanges (as permitted by subparagraph (e[f]) of this rule), in time priority between such participants' Quotes/Orders;

b. Reserve Size of Nasdaq Quoting Market Participants and NNMS Order Entry Firms, in time priority between such participants' Quotes/Orders; and

c. Principal Quotes/Orders of UTP Exchanges, in time priority between such participants' Quotes/Orders.

(ii) Exceptions—The following exceptions shall apply to the above execution parameters:

a. If a Nasdaq Quoting Market Participant or NNMS Order Entry Firm enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Nasdaq Quoting Market Participants and NNMS Order Entry Firms may avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Nasdaq Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party, provided, however, that in the case of a Discretionary Order interacting with a bid/offer entered by the system pursuant to Rule 4710(b)(5), the Discretionary Order (or unexecuted portions thereof) will be returned.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ "I" flagged order in price/time priority.

b. If an NNMS Market Participant enters a Preferenced Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferenced Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferenced Order is next in line to be delivered (or executed), the Preferenced

Order shall be returned to the entering NNMS Market Participant.

c. If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: (1) delivering an execution to a Quoting Market Participant(s) or an NNMS Order Entry Firm that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or (2) delivering a Liability Order to a Quoting Market Participant(s) that participates in the order-delivery functionality of the system at a price substantially away from the current inside bid/offer in that security, the system shall instead process only those portions of the order that will not result in either an execution or delivery at a price substantially away from the current inside best bid/offer in the security and return the remainder to the entering party. For purposes of this subsection only, an execution or delivery based on a sell order shall be deemed to be substantially away from the current inside bid if it is to be done at a price lower than a break-price established by taking the inside bid, reducing it by 10% of the bid's value, and then subtracting $0.01. For example, in a stock with a current inside bid of $10.00, the maximum price at which a single sell order could be executed would be $8.99 calculated as follows: ($10.00—($10.00 × .10 *e.g.* $1)—$.01 = $8.99). For offers, an execution or delivery based on a buy order shall be deemed to be substantially away from the current inside offer if it is done a price higher than a break-price established by taking the inside offer, adding 10% of the offer's value to it, and then adding $0.01. For example, in a stock with a current inside offer of $10.00, the highest price at which a single sell order could be executed would be $11.01 calculated as follows: ($10.00 + ($10.00 × .10 *e.g.* $1) + $.01 = $11.01. *This subsection shall not apply to ITS commitments received from ITS Exchanges or to orders based on such ITS commitments.*

(d) An Auto-Ex order in a *Nasdaq listed security* will execute solely against the Quotes/Orders of NNMS Participants at the best bid/best offer that participate in the automatic execution functionality of the NNMS and that do not charge a separate quote-access fee to NNMS Participants accessing their Quotes/Orders through the NNMS. An Auto-Ex order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed.

e. If an NNMS Market Participant enters a Discretionary Order, the Discretionary Order shall first be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of NNMS Market Participants (including displayed Discretionary Orders at their displayed prices) in conformity with this rule and subject to any applicable exceptions. If the full size of the incoming Discretionary Order cannot be executed at its displayed price, the order may also be executed against (or delivered in an amount equal to) the Quotes/Orders and Reserve Size of NNMS Market Participants within the incoming Discretionary Order's discretionary price range (including displayed Discretionary Orders at their displayed prices), in conformity with this rule and subject to any applicable exception. If the full size of the incoming Discretionary Order cannot be executed in this manner, the order may also be executed by (or receive delivery of) displayed Discretionary Orders with discretionary price ranges that overlap with the incoming Discretionary Order's discretionary price range, in conformity with this rule and subject to any applicable exception. The unexecuted portion of a Discretionary Order will then be retained by NNMS for potential display in conformity with Rule 4707(b).

When a Discretionary Order is displayed as a Quote/Order, Non-Directed Orders or Quotes/Orders entered at the displayed price (including incoming Discretionary Orders with a displayed or discretionary price equal to the displayed Discretionary Order's displayed price) may be executed against (or delivered to) the displayed Discretionary Order, and market orders may be executed against (or delivered to) the displayed Discretionary Order when its displayed price is at the inside. Non-Directed Orders or Quotes/Orders (other than Discretionary Orders) entered at a price within the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the price of the incoming Non-Directed Order or Quote/Order if there are no displayed Quotes/Orders at that price or better. Incoming Discretionary Orders with a discretionary price range that overlaps with the displayed Discretionary Order's discretionary price range may be executed by (or receive delivery of) the displayed Discretionary Order at the overlapping price most favorable to the displayed Discretionary Order. A displayed Discretionary Order that may be executed at a price in its discretionary price range will execute against Non-Directed Orders and Quotes/Orders entered by NNMS Participants in the automatic execution functionality of the NNMS, and will be delivered to Non-Directed Orders and Quotes/Orders entered by NNMS Order-Delivery ECNs.

For purposes of determining execution priority, the price priority of a displayed Discretionary Order will be based on its displayed price when it may be executed at its displayed price. When displayed Discretionary Orders may be executed at prices within their discretionary price ranges, their price priority vis-á-vis one another will be based on their most aggressive discretionary prices, and their price priority vis-á-vis Quotes/Orders that are not Discretionary Orders will be based upon the price at which they are executable.

(f) A Fill or Return order in an ITS Security will be executed solely by the NNMS at the best bid/best offer, without delivering the order to an ITS Exchange. The NNMS will, if necessary, execute against interest at successive price levels.

(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 30 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue.

The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(iv) If an NNMS ECN regularly fails to meet a 5-second response time (as measured by the ECN's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ECN's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the NNMS ECN certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(v) ITS/CAES Market Makers

a. If an ITS/CAES Market Maker declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if that ITS/CAES Market Maker fails to respond in any manner within 7 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue.

b. If the bid side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish a bid of $0.01 for 100 shares. If the offer side of the ITS/CAES Market Maker's Quote/Order is zeroed out, the system then will automatically establish an offer of two times the system best offer plus $0.01 and offer for 100 shares.

c. If an ITS/CAES Market Maker regularly fails to meet a 5-second response time (as measured by the ITS/CAES Market Maker's Service Delivery Platform) over a period of orders, such that the failure endangers the maintenance of a fair and orderly market, Nasdaq will place that ITS/CAES Market Maker's quote in a closed-quote state. Nasdaq will lift the closed-quote state when the ITS/CAES Market Maker certifies that it can meet the 5-second response time requirement with regularity sufficient to maintain a fair and orderly market.

(D) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once a Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS processing Nasdaq will refresh the displayed size out of Reserve Size to a size-level designated by the Nasdaq Quoting Market Participant or NNMS Order Entry Firm, or in the absence of such size-level designation, to the automatic refresh size. The amount of shares taken out of reserve to refresh display size shall be added to any shares remaining in the Displayed Quote/Order and shall be of an amount that when combined with the number of shares remaining in the Nasdaq Quoting Market Participant's Displayed Quote/Order before it is refreshed will equal the displayed size-level designated by the Nasdaq Quoting Market Participant or, in the absence of such size-level designation, to the automatic refresh size. If there are insufficient shares available to produce a Displayable Quote/Order, the Nasdaq Quoting Market Participant's Quote/Order, and any odd-lot remainders, will be refreshed, updated, or retained, in conformity with NNMS Rules 4707 and 4710 as appropriate. To utilize the Reserve Size functionality, a minimum of 100 shares must initially be displayed in the Nasdaq Quoting Market Participant's or NNMS Order Entry Firm's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 100 shares. This functionality will not be available for use by UTP Exchanges.

(B) Auto Quote Refresh ("AQR")—Once an NNMS Market Maker's Displayed Quote/Order size and Reserve Size on either side of the market in the security has been decremented to an amount less than one normal unit of trading due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to an amount less than a normal unit of trading, by a price interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size.

(iii) This functionality shall produce an Attributable Quote/Order.

(iv) The AQR functionality described in this subparagraph shall only be available for use in connection with a NNMS Market Maker's "Legacy Quote." This functionality shall be available only to NNMS Market Makers.

(v) The AQR functionality shall not be available to any participant for any ITS Security.

(3) Entry of Locking/Crossing Quotes/Orders—The system shall process locking/crossing Quotes/Orders as follows:

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e) *or in NASD Rule 5263(a) or (b)*), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing (consistent with subparagraph (b) of this rule) as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant or NNMS Order Entry Firm next in queue who would be locked, and the order will be executed (or delivered for execution) at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants or NNMS Order Entry Firms in queue who would be crossed, and the order will be executed (or delivered for execution) at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system *may* [will], *if consistent with the parameters of the Quote/Order,* reformat the order and display it in Nasdaq [(consistent with the parameters of the Quote/Order)] as a Quote/Order on behalf of the entering Quoting Market Participant or Order Entry Firm. *If an order is not eligible to be reformatted and displayed, the NNMS will reject the remainder of the order back to the entering participant. In ITS Securities, orders entered by NNMS Order Entry Firms are not eligible to be reformatted and displayed.*

(B) Locked/Crossed Quotes/Orders Immediately Before the Open—If the market *in a Nasdaq-listed security* is locked or crossed at 9:29:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. Between 9:29:30 a.m. and 9:29:59 Eastern Time, once NNMS has cleared a locked or crossed market, or if a newly submitted quote/order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by processing such locking or crossing quote/order in a manner consistent with subparagraph (b)(3)(a) of this Rule.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters:

If a Nasdaq Quoting Market Participant has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (B) above, the system shall, before sending the order to any other Quoting Market Participant or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing Nasdaq Quoting Market Participant's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. A Nasdaq Quoting Market Participant may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b) (1)(B)(ii)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a "Y" AIQ Value as provided for in Rule 4710 (b)(1)(B)(ii)(a).

(C) Locked/Crossed Quotes/Orders in ITS Securities at the Open—If the market in an ITS Security is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing (or delivering for execution) the highest bid against the lowest offer(s) against which it is marketable, at the price of the newer in time of the two quotes/orders. This process will be repeated until an un-locked and un-crossed market condition is achieved. While the NNMS is clearing a locked or crossed market, if a newly submitted Quote/Order would create a locked or crossed market, NNMS will prevent a locked or crossed market from being created by holding such Quotes/Orders in queue.

(i) Exception—The following exception shall apply to the above locked/crossed processing parameters:

If an ITS/CAES Market Maker has entered a Locking/Crossing Quote/Order into the system that would become subject to the automated processing described in section (C) above, the system shall, before sending the order to any other ITS/CAES Market Maker or NNMS Order Entry Firm, first attempt to match off the order against the locking/crossing ITS/CAES Market Maker's own Quote/Order if that participant's Quote/Order is at the highest bid or lowest offer, as appropriate. An ITS/CAES Market Maker may avoid this automatic matching through the use of anti-internalization qualifier as set forth in Rule 4710(b)(1)(B)(ii)(a). NNMS Order Entry Firms that enter locking/crossing Quotes/Orders shall have those Quotes/Orders processed as set forth in paragraph (B) above, unless they voluntarily select a "Y" AIQ Value as provided for in Rule 4710 (b)(1)(B)(ii)(a).

(4) An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

(5) If an NNMS Market Maker's Attributable Quote/Order is reduced to less than a round-lot amount on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS on that side of the market, and the NNMS Market Maker will be permitted a grace period of 30 seconds within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the AQR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have the exhausted side of its quotation restored by the system at a price $0.01 inferior to the lowest displayed bid price or the highest displayed offer price in that security as appropriate. If all bids and/or offers are exhausted so that there are no longer any Quote/Orders displayed on the bid and/or offer side of the market, the system will refresh a market maker's exhausted bid or offer quote to a normal unit of trading priced $0.01 inferior to the lesser of either: (a) the last valid displayed inside bid/offer in the security before all such bids/offers were exhausted; or (b) the market maker's last displayed bid/offer before exhaustion. If the resulting bid/offer quote would create a locked or crossed market, NNMS will instead re-open the exhausted market maker's bid/offer quote at a price $0.01 inferior to the unexhausted inside bid/offer in that security. If at any time this automatic quote restoration process would result in the creation of a bid/offer of less than $0.01, the system will refresh that bid/offer to a price of $0.01. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days.

(6) Notwithstanding the provisions of subparagraph (5) above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 *or an ITS/CAES Market Maker that obtains an excused withdrawal pursuant to Rule 6350* prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) an NNMS Market Maker *or ITS/CAES Market Maker* that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNMS securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

(7) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraph (b)(5) of this rule.

(8) In the event that a malfunction in the Quoting Market Participant's equipment occurs, rendering communications with NNMS inoperable, the Quoting Market Participant is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS and a closed-quote status, and if the Quoting Market Participants is an NNMS Market Maker an excused withdrawal from Nasdaq pursuant to Rule 4619 *or an ITS/CAES Market Maker an excused withdrawal pursuant to Rule 6350.* If withdrawal is granted,

Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal and shall close the quote. Such manual intervention, however, will take a certain period of time for completion and, unless otherwise permitted by the Association pursuant to its authority under Rule 11890, the Quoting Market Participants will continue to be obligated for any transaction executed prior to the effectiveness of the withdrawal and closed-quote status.

(c) Directed Order Processing—A participant may enter a Directed Order *in Nasdaq-listed securities* into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order (not an execution) to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participant shall owe no liability under the Firm Quote Rule to that order, unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders (as described in Rule 4706(b)). Additionally, upon delivery, the system will not decrement the receiving Quoting Market Participant's Quote/Order. This provision shall not apply to Preferenced Orders.

(d) NNMS Order Entry Firms. All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide and these rules. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

(e) UTP Exchanges. Participation in the NNMS by UTP Exchanges is voluntary. If a UTP Exchange does not participate in the NNMS System, the UTP Exchange's quote will not be accessed through the NNMS, and the NNMS will not include the UTP Exchange's quotation for order processing and execution purposes.

A UTP Exchange may voluntarily participate in the NNMS System if it executes a Nasdaq Workstation Subscriber Agreement, as amended, for UTP Exchanges, and complies with the terms of this subparagraph (e[f]) of this rule. The terms and conditions of such access and participation, including available functionality and applicable rules and fees, shall be set forth in and governed by the Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges. The Nasdaq Workstation Subscriber Agreement, as amended for UTP Exchanges may expand but shall not contract the rights and obligations set forth in these rules. Access to UTP Exchanges may be made available on terms that differ from the terms applicable to members but may not unreasonably discriminate among similarly situated UTP Exchanges. The following provisions shall apply to UTP Exchanges that choose to participate in the NNMS

(1) Order Entry—UTP Exchanges that elect to participate in the system shall be permitted to enter Directed and Non-Directed Orders into the system subject to the conditions and requirements of Rule 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described in subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq.

(A) UTP Exchange Principal Orders/Quotes—UTP Exchanges that elect to participate in the system shall transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the [MMID] *MPID* for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the number of price levels authorized for aggregation and display pursuant to Rule 4701(ee).

(B) UTP Exchange Agency Quotes/Orders

(i) A UTP Exchange that elect to participate in the system may transmit to the NNMS Quotes/Orders at a single as well as multiple price levels that meet the following requirements: are not for the benefit of a broker and/or dealer that is with respect to the UTP Exchange a registered or designated market maker, dealer or specialist in the security at issue; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote").

(ii) Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the [MMID] *MPID* for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing—UTP Exchanges that elect to participate in the system shall be required to provide automatic execution against their Quotes/Orders for Nasdaq Quoting Market Participants and NNMS Order Entry Firms, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall have Non-Directed Orders they enter into the system processed as described in subparagraph (b) of this rule.

(4) Directed Order Processing—UTP Exchanges that elect to participate in the system shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

(5) Decrementation—UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b) of this rule.

(6) Scope of Rules—Nothing in these rules shall apply to UTP Exchanges that elect not to participate in the system.

4711. Clearance and Settlement

All transactions executed in NNMS shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

4712. Obligation To Honor System Trades

(a) If an NNMS Participant, or clearing member acting on his behalf, is reported by NNMS to clearing, or shown by the activity reports generated by NNMS as constituting a side of a System trade, such NNMS Participant, or clearing member acting on his behalf, shall honor such trade on the scheduled settlement date.

(b) Nasdaq shall have no liability if an NNMS Participant, or a clearing member acting on his behalf, fails to satisfy the obligations in paragraph (a).

4713. Compliance With Rules and Registration Requirements

(a) Failure by an NNMS Participant to comply with any of the rules or registration requirements applicable to NNMS identified herein shall subject

such NNMS Participant to censure, fine, suspension or revocation of its registration as an NNMS Market Maker, *ITS/CAES Market Maker,* Order Entry Firm, and/or NNMS ECN or any other fitting penalty under the Rules of the Association.

(b)(1) If an NNMS Participant fails to maintain a clearing relationship as required under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705, it shall be removed from NNMS until such time as a clearing arrangement is reestablished.

(2) An NNMS Participant that is not in compliance with its obligations under paragraphs (a)(2), (c)(2), or (d)(3) of Rule 4705 shall be notified when Nasdaq exercises it authority under paragraph (b)(1) of Rule 4713.

(3) The authority and procedures contained in paragraph (b) do not otherwise limit the Association's authority, contained in other provisions of the Associations rules, to enforce its rules or impose any fitting sanction.

4715. Adjustment of Open Quotes and/or Orders

NNMS will automatically adjust the price and/or size of open quotes and/or orders *in all NNMS securities (unless otherwise noted)* resident in the system in response to issuer corporate actions related to a dividend, payment or distribution, on the ex-date of such actions, except where a cash dividend or distribution is less than one cent ($0.01), as follows:

(a) Quotes—All bid and offer side quotes shall be purged from the system.

(b) Sell Orders—Sell side orders *in Nasdaq-listed and NYSE-listed securities* shall not be adjusted by the system and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system. *Sell side orders in Amex-listed securities shall be adjusted in accordance with the procedures set forth below for Buy Orders in the event of a Stock Dividend or Stock Split.*

(c) Buy Orders—Buy side orders shall be adjusted by the system based on the particular corporate action impacting the security (*i.e.* cash dividend, stock dividend, both, stock split, reverse split) as set forth below:

(1) *Odd lot orders in ITS Securities that result from partial execution rather than order entry shall be canceled rather than adjusted.*

[(1)] *(2)* Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will then be rounded down to the nearest penny unless marked "Do Not Reduce".

[(2)] *(3)* Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. Unless marked "Do Not Increase", the size of the order shall be increased by first, (A) Multiplying the size of the original order by the numerator of the ratio of the dividend or split, then (B) dividing that result by the denominator of the ratio of the dividend or split, then (C) rounding that result to the next lowest share.

[(3)] *(4)* Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

[(4)] *(5)* Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.

[(5)] *(6)* Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering firm.

(d) Open buy and sell orders that are adjusted by the system pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.

4719. Anonymity 2004–015

(a) Pre-Trade Anonymity

(1) With the exception of those transactions described in paragraph (a)(2) below, the identity of the member submitting a Non-Attributable Quote/Orders seeking pre-trade anonymity will remain anonymous until execution, at which time the member's identity will be revealed to its contra party.

(2) A Non-Attributable Quote/Order seeking pre-trade anonymity will be processed on a fully anonymous basis in accordance with paragraph (b) below when it matches and executes against a Non-Attributable Quote/Order seeking full anonymity.

(b) Full Anonymity

(1) Transactions executed in NNMS in which at least one member submits a Non-Attributable Quote/Order seeking full anonymity will be processed anonymously. The transaction reports will indicate the details of the transactions, but will not reveal contra party identities.

(2)(A) The processing described in paragraph (b)(1) shall not apply to transactions executed in NNMS when the member whose Quote/Order is decremented is an Order-Delivery ECN that charges an access fee.

(B) Except as required to comply with the request of a regulator, or as ordered by a court or arbitrator, Order-Delivery ECNs shall not disclose the identity of the member that submitted a Non-Attributable Quote/Order that decremented the Order-Delivery ECN's Quote/Order.

(3) The Association will reveal a member's identity in the following circumstances:

(A) When the National Securities Clearing Corporation ("NSCC") ceases to act for a member, or the member's clearing firm, and NSCC determines not to guarantee the settlement of the member's trades;

(B) for regulatory purposes or to comply with an order of an arbitrator or court; or

(C) on risk management reports provided to the member's contra parties each day after 4 p.m., which disclose trading activity on an aggregate dollar value basis.

(4) The Association will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote/Order has been decremented by another Quote/Order submitted by that same member.

(5)(A) In order to satisfy members' record keeping obligations under SEC Rules 17a–3(a)(1) and 17a–4(a), Nasdaq shall, with the exception of those circumstances described in subparagraph (B) below, retain for the period specified in Rule 17a–4(a) the identity of each member that executes a fully anonymous transaction described in paragraph (b) of Rule 4719. The information shall be retained in its original form or a form approved under Rule 17a–6.

(B) In the situations described in paragraphs (b)(2) or (b)(4) of Rule 4719, and solely with respect to the member that submits, and receives an execution of, a fully anonymous Non-Attributable Quote/Order that is a Preferenced Order, the member retains the obligation to comply with Rules 17a–3(a)(1) and 17a–4(a) because it possesses the identity of its contra party.

* * *

5200. Intermarket Trading System/ Computer Assisted Execution System

5210. Definitions

(a)–(h) No Change.

(i) "CAES" means the "Computer Assisted Execution System", the computerized order routing and execution facility for ITS Securities, as from time to time modified or supplemented, that is operated by The Nasdaq Stock Market, Inc. and made available to NASD members. CAES functionality is offered through the "Nasdaq National Market Execution System" or "NNMS" which operates pursuant to the Rule 4700 Series.

5220. ITS/CAES Registration

In order to participate in ITS, a market maker must be registered with the Association as an ITS/CAES Market Maker in each security in which a market will be made in ITS. Such registration shall be conditioned upon the ITS/CAES Market Maker's continuing compliance with the following requirements:

(a) registration as a CQS market maker pursuant to Rule 6320 and compliance with the Rule 6300 Series;

(b) execution of an ITS/CAES Market Maker application agreement with the Association at least two days prior to the requested date of registration;

(c) *participation in NNMS in accordance with the Rule 4700 and 5200 Series;*

([c]*d*) compliance with SEC Rule 15c3–1;

([d]*e*) compliance with the ITS Plan, SEC Rule 11Ac1–1 and all applicable Rules of the Association;

([e]*f*) the maintenance of continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by the Association;

([f]*g*) maintenance of the physical security of the equipment used to interface with the ITS System located on the premises of the ITS/CAES Market Makers to prevent the unauthorized entry of communications into the ITS System; and

([g]*h*) acceptance and settlement of each ITS System trade that the ITS System identifies as effected by such ITS/CAES Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance of settlement of such identified ITS System trade by the clearing member on the regularly scheduled settlement date.

5221. Suspension or Revocation of ITS/ CAES Registration

No Change.

5230. ITS Operations

No Change.

5240. Pre-Opening Application—Opening by ITS/CAES Market Maker

No Change.

5250. Pre-Opening Application—Openings on Other Participant Markets

No Change.

5260. System Trade and Quotations

5261. Obligation To Honor System Trades

No Change.

5262. Trade-Throughs

No Change.

5263. Locked or Crossed Markets

No Change.

5264. Block Transactions

No Change.

5265. Authority To Cancel or Adjust Transactions

No Change.

6300. Consolidated Quotations Service (CQS)

No Change.

6400. Reporting Transactions in Listed Securities

No Change.

[FR Doc. 04–5114 Filed 3–5–04; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49353; File No. SR–NSCC–2003–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend the Procedure for Determining Intraday Mark-to-the-Market Payments

March 2, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 20, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on October 20, 2003, amended the proposed rule change described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is proposing to amend Procedure XV to give NSCC more flexibility in determining the intraday mark-to-the-market amount it will collect from a member for unsettled positions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC Rule 15 (Financial Responsibility and Operational Capability) provides that NSCC may obtain such adequate assurances of a member's financial responsibility and operational capability as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, Settling Members, Municipal Comparison Only Members, Fund Members, Insurance Carrier Members, creditors, or investors.

Currently, Procedure XV (Clearing Fund Formula and Other Matters) describes the criteria for determining which securities meet classifications for additional mark-to-the-market payments for high risk/volatile issues and provides specific formulas that may be used to determine additional deposit amounts. Generally, NSCC assesses on an intraday basis an additional mark-to-the-market charge to a member when the member maintains a position in a security where the intraday exposure to NSCC is in excess of 10% of the member's excess net capital. In addition, with respect to illiquid unsettled positions, NSCC may request additional collateral if the member's net unsettled position in any one security is greater than 25% of the security's average daily volume.

[2] The Commission has modified the text of the summaries prepared by NSCC.

NSCC is replacing the formulas currently reflected in its procedures with a more generalized provision to give NSCC the flexibility to determine what amount, if any, should be collected based on conditions that exist at that time.[3] In addition, the reference to the authority which permits this charge is being corrected to reflect NSCC Rule 15, section 4.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[4] and the rules and regulations thereunder applicable to NSCC because it will assure the safeguarding of funds and securities for which it is responsible by permitting NSCC to more appropriately collect collateral to cover its exposure from its members' unsettled positions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in either hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC.

All submissions should refer to File No. SR–NSCC–2003–09 and should be submitted by March 29, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5116 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

[3] Additional factors that NSCC may use in determining intraday mark-to-the-market requirements include but are not limited to (1) percent of total security float, (2) average daily security volume, (3) position size (quantity and value), (4) portfolio concentration, and (5) industry/sector concentration.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49352; File No. SR–NSCC–2003–03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Execution Time for CNS Buy-Ins

March 2, 2004.

On March 24, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 2003, amended proposed rule change File No. SR–NSCC–2003–03 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposed rule change was published in the **Federal Register** on January 16, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The purpose of the proposed rule change is to modify NSCC Procedures VII.J. "CNS Accounting Operation, Recording of CNS Buy-Ins" and X.A.1. "Execution of Buy-Ins, CNS System, Equity Securities and Corporate Debt Securities" with regard to the execution time of CNS buy-ins. Except with respect to securities subject to a voluntary corporate reorganization, a member having a long CNS position at the end of any day may submit to NSCC a notice of intention to buy-in ("buy-in notice") specifying a quantity of securities (not exceeding such long CNS positions) the member intends to buy-in ("buy-in position"). The day the CNS buy-in notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes both an evening and daytime allocation. The CNS buy-in position is given high priority for allocation through N+2.

Pursuant to NSCC Procedure VII, if a CNS buy-in position is not satisfied at the end of the day cycle on N+2, the CNS buy-in may be executed. In effect, members have from the completion of the day cycle on N+2 to the close of the markets to execute the CNS buy-in. Operationally, as the day cycle generally completes at 3:10 p.m. eastern standard time ("e.s.t."), participants face a narrow timeframe within which they may execute CNS buy-ins. In the event that settlement and recycle times are extended or delayed, that window of time is further reduced.

At the request of participants and after consultation with the Securities Industry Association Buy-In Committee, NSCC is modifying Procedures VII and X to permit the execution of CNS buy-ins beginning at 3 p.m. e.s.t. or at such time as established by NSCC because of market events (*e.g.*, days the marketplaces close early). NSCC will advise participants of any earlier execution time through an important notice five business days in advance. The change in time is not a requirement for executions of buy-ins but is to give

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49061 (January 12, 2004), 69 FR 2641 (January 16, 2004).

participants the ability to execute CNS buy-ins in a more efficient manner.

II. Discussion

Section 17A(b)(3)(F)[3] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By allowing NSCC to establish an earlier and standard timeframe for CNS buy-ins, the proposed rule change provides NSCC members with a longer and consistent time period in which to execute CNS buy-ins to satisfy their CNS long-positions. As such, the proposed rule change is consistent with NSCC's obligation to facilitate the prompt and accurate clearance and settlement of securities transactions. Therefore, the Commission finds that NSCC's proposed rule change is consistent with its obligations under section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change (File No. SR–NSCC–2003–03) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5117 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49345; File No. SR–NYSE–2004–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Follow-up Amendments to Its Constitution and Rules in Connection With Its New Governance and Management Architecture

March 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 16, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Constitution and Rules. The changes to the NYSE Constitution and Rules constitute follow-up amendments related to the Exchange's new governance and management architecture, which was approved by the Securities and Exchange Commission on December 17, 2003.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

The amended and restated Constitutional provisions and revised Rules, marked to show changes from the Exchange's existing Constitution and Rules, are set forth in Exhibit A hereto.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

By order dated December 17, 2003, the Commission approved a proposed rule change submitted by the Exchange to amend and restate the Exchange's Constitution to reform the governance and management architecture of the Exchange.[4] The Commission's approval order noted that the Exchange contemplated adopting several further amendments to the Constitution.[5] This filing proposes those additional amendments.

The proposed amendments to the Exchange's Constitution will accomplish the following:

- Amend Article IV, section 12(a) to codify that each of the Standing Committees of the Board of Directors shall have the authority to engage independent legal counsel and other advisors as it determines necessary to carry out its duties, specifying that they should be other than the counsel or other advisors who advise Exchange officers or employees.[6]
- Amend Article IV, section 12(a) to clarify that the Chief Executive Officer ("CEO") is recused from Board deliberations on the activities of the Standing Committees specified in that paragraph.[7]
- Amend Article IV, section 14(a) to clarify that rulemaking on the subjects described in that paragraph as normally confined to the Board or its committees may, if necessary, be authorized by an officer of the Exchange between board meetings, subject to informing the Board at its next meeting, and to the prior approval of the Chief Regulatory Officer if on a regulatory matter.[8]
- Amend Article VI, section 1 to clarify that it is the Chief Regulatory Officer who appoints regulatory officers, and amend section 3 of that Article to clarify that the CEO's responsibilities are subject to the specific provisions elsewhere in the Constitution regarding the separation of the regulatory functions.
- Modify Article V, section 2(b) to add an individual investor

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) ("Approval Order").

[4] *See* Securities Exchange Act Release No. 48946 (December 17, 2003); 68 FR 74678 (December 24, 2003).

[5] *Id.*, at note 4.

[6] This was first proposed with respect to the Audit Committee only, but was later expanded to cover any Standing Committee and to add the caveat regarding use of different advisors.

[7] These are the Nomination & Governance, Human Resources & Compensation, Audit, and Regulatory Oversight & Regulatory Budget Committees.

[8] As originally provided to the membership in a Special Membership Bulletin regarding Additional Amendments to the Constitution ("Special Membership Bulletin"), dated November 26, 2003, this language would have authorized an officer to "adopt rules or otherwise act as aforesaid." The Exchange notes that, at the suggestion of Commission staff, the "otherwise act" language was deleted to avoid ambiguity. The Exchange further indicates that in the same section, again at the suggestion of Commission staff, language was added to clarify that a "committee consisting solely of directors" means a committee consisting solely of independent directors, *i.e.*, excluding the Chief Executive Officer. Under Article XIV, section 1 of the Constitution, minor, clarifying changes such as these may be made by the Board of the Exchange without the need for a further notice to the members or a waiting period.

representative to the Board of Executives.

• Modify Article V, section 2(b)(ii) to remove the requirement that Specialist representatives on the Board of Executives be the chief or a principal executive officer of the specialist firm, thereby increasing the pool of potential candidates, while adding a requirement that each person in this category be registered as a specialist and spend substantial time on the floor of the Exchange.

In addition to the foregoing Constitutional amendments, the proposed rule change also includes several amendments to the Exchange's Rules. In general, each of these changes is intended to conform the Exchange's Rules to its new Constitution.

More specifically, the proposed amendments to the Exchange's Rules will accomplish the following:

• Accommodate the separation of the offices of the Chairman of the Board of Directors and the CEO by, among other things, differentiating the authority and responsibilities of the Chairman and CEO.

• Eliminate the office, authority and responsibilities of the Vice Chairman.

• Provide generally that the various administrative duties and responsibilities exercised under the Rules by the Floor Directors will now be exercised by the Floor representatives serving on the new Board of Executives.

• Specify under Rule 103C (Listed Company Relations Proceedings) that the Listed Company Relations Subcommittee of the Quality of Markets Committee, previously consisting of two listed company members of the committee and two Vice Chairmen of the Exchange, will instead consist of four members of the Board of Executives, two of whom shall be representatives of listed companies.

• Amend Rule 476 (Disciplinary Proceedings) to specify that a review by the Board may be required by any member of the Board of Executives, as well as by any member of the Board of Directors.

• Amend Rule 499, Commentary .70 (as well as the identical provision found in section 804 of the Listed Company Manual) to cross reference specifically to the Committee specified in section 12(b)(1) of Article IV of the Exchange's Constitution.

1. Statutory Basis

The basis for this proposed rule change is the requirement under section 6(b)(1)[9] of the Act that an exchange be organized and have the capacity to be able to carry out the purposes of the Act; the requirement under section 6(b)(3)[10] that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors; and the requirement under section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NYSE–2004–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2004–02 and should be submitted by March 29, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(1)[13] of the Act, which requires that the exchange be so organized and have the capacity to be able to carry out the purposes of the Act. The Commission also finds that the proposed rule change is consistent with section 6(b)(3)[14] of the Act, which requires that one or more directors of an exchange be representative of issuers and investors, and section 6(b)(5)[15] of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission believes that the proposed rule change should help facilitate the implementation of the NYSE's new governance structure, to the benefit of the Exchange, its constituencies, investors and the public generally.[16] The Commission believes that the proposed Constitutional changes relating to the operation of the Exchange's Standing Committees, namely the authority of the Standing Committees to engage independent legal counsel and other advisors, and the

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(3).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(3).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that the NYSE expressed its intention to pursue these Constitutional changes in the Special Membership Bulletin, and in a letter to the Director, Division of Market Regulation, which outlined the proposed additional changes to the Constitution. See Special Membership Bulletin, *supra note* 8, and letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Annette L. Nazareth, Director, Division of Market Regulation, Commission, dated December 4, 2003. The Commission also referred to these prospective Constitutional changes in the Approval Order, at notes 14, 22, 23, 35, 36, 39, 40, and 88.

limitation on the involvement of the Exchange's CEO in the deliberations of the Standing Committees, should help ensure the independence of these key committees, which are charged with overseeing critical Exchange operations. The Commission also believes that the proposed Constitutional changes relating to the NYSE's Chief Regulatory Officer, including the explicit authority of the Chief Regulatory Officer to appoint other regulatory officers, and the clarification of the authority of the Exchange's CEO regarding regulatory matters, are designed to further insulate the Exchange's regulatory function from undue management pressures.

In addition, the Commission believes that the NYSE's proposals to remove the requirement that specialist representatives on the Board of Executives be the chief or a principal officer of the specialist firm, and to add the requirement that the specialist representative spend a substantial amount of time on the floor of the Exchange, should broaden the pool of qualified specialist candidates for the Board of Executives. The Commission also believes that the Exchange's proposal to allow the Board to delegate the rulemaking authority referenced in section 14(a) of the Constitution to an Exchange officer between Board meetings (subject to appropriate notice and approval, where appropriate, from the Chief Regulatory Officer) should provide adequate flexibility for the Exchange to effect necessary changes during the periods between Board meetings, while maintaining the Board's and the Chief Regulatory Officer's oversight and control.

The Commission also believes that the Exchange's proposal to require that at least one member of the Board of Executives represent individual investors in equity securities furthers the objective of section 6(b)(3)[17] of the Act that investors be represented in the governance of an exchange. The Commission notes that in order to fulfill the requirements of section 6(b)(3) of the Act, the NYSE Constitution now requires that the Nominating & Governance Committee recommend at least one candidate representing issuers and one candidate representing investors for membership on the Board of Directors.[18] The Commission believes that the current proposal to reserve a specific slot for an individual investor representative to the Board of Executives advances the goal of ensuring that the various Exchange constituencies are represented and given an opportunity to provide their input in the Exchange's governance.

The Commission finds that the proposed amendments to the Exchange's Rules conform these Rules to recent changes to the Constitution. The Commission notes, for example, that the proposed changes to Exchange Rules that further delineate the authority and responsibilities of the NYSE Chairman and CEO are consistent with the Exchange's goal to clarify the roles of these two positions. The Commission also notes that the Exchange has proposed other changes to the Exchange's Rules to reflect its new governance and management structure. For example, by replacing references to "Floor Directors" in the Exchange's Rules with "Board of Executive Floor Representatives," the Exchange simply reflects the fact that, under the new governance structure, the position of "Floor Director" no longer exists. The Commission also believes that revising the composition of the Listed Company Relations Subcommittee of the Quality of Markets Committee to consist of four Board of Executive members, two of whom represent listed companies, and a senior officer of the Exchange reflects the recent Constitutional changes. Similarly, in the Commission's view the rule revisions to permit a member of the Board of Executives to call for Board review of a determination or penalty imposed by a Hearing Panel comports with the recent change to Article IX of the Constitution. Finally, the Commission believes that other proposed changes to the Exchange's Rules to delete references to obsolete terms and offices conform the Rules to the Constitution.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2)[19] of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval to the proposal should help the Exchange to implement the recent changes to the NYSE's governance and management structure, clarify certain Constitution provisions, and conform various Exchange rules to the new Constitution.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSE–2004–02), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

Exhibit A

Text of the Proposed Rule Change (Changes are *italicized*; deleted material is in [brackets].)

New York Stock Exchange, Inc.

Constitution

Article IV

Board of Directors

* * * * *

Sec. 12. Standing Committees. The Standing Committees and their respective Chairmen shall be appointed by the Board at its annual organizational meeting. The Board shall adopt for each Standing Committee a charter consistent with the duties prescribed in the subsections below, and including such additional duties as may be considered appropriate and not inconsistent with this Constitution. *Each Standing Committee shall have the authority to engage independent legal counsel and other advisors as it determines necessary to carry out its duties, but may not use counsel or other advisors who advise Exchange officers or employees.*

(a) Committees Consisting Solely of Directors. The Standing Committees described in Section 12(a)(1)–(4) shall consist solely of directors, other than the Chief Executive Officer, and shall report to the Board. Such Standing Committees may be combined with any other such Standing Committee, be subdivided into one or more such Standing Committees, or the Board may constitute itself as a committee of the whole in respect of such a Standing Committee. [; provided, however, that if the Board constitutes itself] *The Chief Executive Officer shall be recused from deliberations of the Board, whether it is acting as the Board or* as a committee of the whole, with respect to the activities of the Nominating & Governance Committee, the Human Resources & Compensation Committee, the Audit Committee or the Regulatory Oversight & Regulatory Budget Committee [, the Chief Executive Officer shall be recused from such Board deliberations].

(1) Nominating & Governance Committee. The Nominating & Governance Committee shall be

[17] 15 U.S.C. 78f(b)(3).

[18] NYSE Constitution, Article IV, section 12(a)(1).

[19] 15 U.S.C. 78s(b)(2).

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

responsible for (i) recommending to the Board candidates for Board membership in accordance with Article IV, Section 2 and candidates for Trustees of the Gratuity Fund, (ii) recommending to the Board candidates for Board of Executives membership, (iii) conducting the Board's annual governance review, (iv) reviewing and recommending the Exchange's corporate governance guidelines, (v) establishing an appropriate process for, and overseeing implementation of, the Board's self-assessments (including Board self-assessment, committee self-assessments and director assessments) and the Board of Executives' self-assessments, (vi) recommending director compensation, and (vii) succession planning for the Chairman and Chief Executive Officer of the Exchange. In discharging its responsibilities under clause (i) of the immediately preceding sentence, the Nominating & Governance Committee shall propose persons as candidates for the Board who, in the opinion of the Committee, (a) are committed to serving the interests of the public and strengthening the Exchange as a public securities market; and (b) include among their number individuals at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning issuers and at least one of whom is intended to allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning investors. In addition, the Nominating & Governance Committee shall establish procedures to solicit the input of investors in equity securities and members regarding Board candidates. The Nominating & Governance Committee shall also solicit input from the various Exchange communities regarding candidates for appointment by the Board to the Board of Executives. Consensus recommendations for candidates to represent the groups referenced in clauses (ii), (iii) and (iv) of Article V, Section 2(b) put forward by the respective representatives of those groups shall be forwarded to the Board as the recommendations of the Nominating & Governance Committee unless and to the extent such Committee determines that a candidate does not qualify for the position.

(2) Human Resources & Compensation Committee. The Human Resources & Compensation Committee shall be responsible for (i) reviewing and approving corporate goals and objectives relevant to Chief Executive Officer compensation, evaluating the Chief Executive Officer's performance in light of those goals and objectives, and, together with the other directors elected by the members, determining and approving such compensation, (ii) reviewing and approving recommendations regarding compensation and personnel actions involving senior Exchange personnel, including such recommendations involving senior regulatory personnel received from the Regulatory Oversight & Regulatory Budget Committee, and (iii) reporting annually to the members and the public on the compensation of the five most highly compensated officers of the Exchange (as well as director compensation) and on the compensation philosophy and methodology used to award that compensation (including information relating to appropriate comparisons, benchmarks, performance measures and evaluation processes consistent with the mission of the Exchange).

(3) Audit Committee. The Audit Committee shall be responsible for assisting the board in its oversight of the integrity of the Exchange's financial statements, the Exchange's compliance with legal and regulatory requirements, and the independent auditor's qualifications and independence, including the direct responsibility for (i) the hiring, firing and compensation of the independent auditor, (ii) overseeing the independent auditor's engagement, (iii) meeting regularly in executive session with the auditor, (iv) reviewing the auditor's reports with respect to the Exchange's internal controls, (v) pre-approving all audit and non-audit services performed by the auditor and (vi) determining the budget and staffing for the Internal Audit Unit. The Audit Committee charter shall contain additional duties and responsibilities comparable to those required of issuers listed on the Exchange.

(4) The Regulatory Oversight & Regulatory Budget Committee. The Regulatory Oversight & Regulatory Budget Committee shall be responsible for (i) assuring the effectiveness, vigor and professionalism of the Exchange's regulatory program, (ii) determining the budget for the Regulatory Group, the Listings and Compliance Unit, the Hearing Board, the Arbitration Unit and the Regulatory Quality Review Unit and (iii) oversight of the Regulation, Enforcement & Listing Standards Committee and the Regulatory Quality Review Unit. This Committee shall determine the Exchange's regulatory plan, budget and staffing proposals annually and shall be responsible for assessing the Exchange's regulatory performance and recommending compensation and personnel actions involving senior regulatory personnel to the Board's Human Resources & Compensation Committee for action.

(b) Joint Committees

(1) The Regulation, Enforcement & Listing Standards Committee shall be composed of both directors (other than the Chief Executive Officer) and Board of Executives members (including at least one Industry Member of the Board of Executives) as selected by the Board; provided, however, that a majority of the members of such committees voting on a matter subject to a vote of such Committee shall be directors. Such committee shall report to the Regulatory Oversight & Regulatory Budget Committee and shall (i) review and provide general advice with respect to the Exchange's programs for market surveillance, member and member organization regulation and enforcement, and the listing and de-listing of securities, and (ii) hear appeals of disciplinary determinations and determinations to de-list a listed company.

(2) Additional joint committees may be appointed by the Board from time to time in its discretion; provided that each shall consist of at least one director (other than the Chief Executive Officer). All such committees shall report to the Board.

Sec. 13. Special Committees, Advisory Committees, Etc. Special committees, subcommittees, advisory committees, boards or councils may be appointed from time to time in the Board's discretion and may be comprised of individuals who are not directors or members of the Board of Executives.

Sec. 14. Delegation.

(a) Delegation Authority. The Board may delegate such of its powers as it may from time to time determine, subject to the provisions of the Constitution and applicable law, to the Board of Executives, to such officers and employees of the Exchange, and to such committees, composed either of directors or otherwise, as the Board may from time to time authorize; provided, however, that, except as this Constitution otherwise provides, the Board may not delegate, and no committee may re-delegate, to the Board of Executives, *to officers and employees of the Exchange* or to any committee *other than a committee* consisting solely of directors *(other than the Chief Executive Officer)*, authority either to adopt rules under Article VIII, Section 1 or Article IX, Section 1, or to act on any subject matter described in Article IV, Section 12(a) or (b)(1), except by effecting a rule change within the meaning of Section 19(b)(1) of the Act.

Notwithstanding the foregoing, the Board may authorize an officer or officers of the Exchange to adopt rules as aforesaid, so long as the Board is informed of any such action at its next meeting, and the prior approval of the Chief Regulatory Officer is obtained for any regulatory matter. Any committee of directors to which authority is delegated to adopt rules under Article VII, Section 1 or Article IX, Section 1 shall include thereon at least one director nominated by the Industry Members of the Board of Executives, as provided in Article IV, Section 2. The Board shall diligently oversee the activities of the Board of Executives, the officers and employees of the Exchange, and any committees to which the Board has delegated authority pursuant hereto.

(b) Limitation of Delegation Authority. A member, member organization, allied member or approved person affected by a decision of any officer, employee or committee acting under powers delegated by the Board may require a review by the Board of such decision, by filing with the Secretary of the Exchange a written demand therefore within 10 days after the decision has been rendered, except as otherwise provided in Article IX, Section 6. Any and all powers delegated by the Board may continue to be exercised by the Board notwithstanding such delegation, and the Board may exercise such review and oversight over the exercise of (or omission to exercise) any delegated authority as it shall at any time determine.

* * * * *

Article V

Board of Executives

Sec. 1. Powers and Authority of the Board of Executives. The Board shall establish a Board of Executives. Subject to the Board's ultimate authority, review and oversight and except with respect to the responsibilities delegated to the Standing Committees, pursuant to Article IV, Section 12, the Board of Executives shall advise the Chief Executive Officer in his or her management of the operations of the Exchange. Copies of any materials, documents or reports prepared or received by the Board of Executives shall be furnished to the Board of Directors. Industry Members of the Board of Executives (as defined in Section 2 of this Article) shall also be responsible for recommending to the Board candidates for Board membership in accordance with, and who meet the criteria provided for in, Article IV, Section 2 of this Constitution. In discharging this responsibility, the Industry Members of the Board of Executives shall propose persons who, in their opinion, (i) are committed to serving the interests of the public and strengthening the Exchange as a public market, and (ii) will allow the Exchange to meet the requirements of section 6(b)(3) of the Act concerning members of the Exchange.

Sec. 2. Composition of Board of Executives.

(a) The Board of Executives shall provide a reasonably balanced representation of the many communities that come together in the Exchange: listed companies, investors, members and member organizations, and lessor members.

(b) The Board of Executives shall consist of the Chairman of the Board (who shall be the Chairman of the Board of Executives), the Chief Executive Officer (if such individual is not also the Chairman), and at least 20 but no more than 25 members ("Board of Executives members"). The Board of Executives members (other than the Chairman and Chief Executive Officer) shall be appointed by the Board at its annual organizational meeting and shall consist of (i) at least six individuals who are either the chief executive or a principal executive officer of a member organization that engages in a business involving substantial direct contact with securities customers, (ii) at least two individuals, *each of whom is registered as a specialist and spends a substantial part of his or her time on the Floor of the Exchange,* [who are either the chief executive or a principal executive officer of a specialist member organization,] (iii) at least two individuals, each of whom spends a majority of his or her time on the Floor of the Exchange, and has as a substantial part of his or her business the execution of transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization, but who shall not be registered as a specialist, (iv) at least two individuals who are lessor members who are not affiliated with a broker or dealer in securities, (v) at least four individuals who are either the chief executive or a principal executive officer of an institution that is a significant investor in equity securities, as least one of whom shall be a fiduciary of a public pension fund; *(vi) at least one individual intended to represent individuals who invest in equity securities and are retail clients of member organizations,* and (vii) at least four individuals who are either the chief executive or a principal executive officer of a listed company (the members of the Board of Executives referenced in subsections (i), (ii), and (iii) herein collectively shall be called "Industry Members of the Board of Executives"). If the Board increases the size of the Board of Executives it shall strive to maintain approximately the same balance between Industry Members of the Board of Executives and other members of the Board of Executives as is represented above. If the Board increases the size of the Board of Executives, it shall also be free to add members to the Board of Executives who represent other elements of the Exchange community. Each person who is not a member of the Exchange and is appointed to the Board of Executives shall, by the acceptance of such position, be deemed to have agreed to uphold this Constitution.

* * * * *

Article VI

Officers

Sec. 1. Officers. The officers of the Exchange shall include the Chairman of the Board, the Chief Executive Officer, the President, if there be one, the Chief Regulatory Officer, one or more Vice Presidents (one or more of whom may be designated as Executive Vice Presidents or as Senior Vice Presidents or by other designations), a Secretary, a Treasurer, a Controller and such other officers as the Chief Executive Officer may propose, subject to the approval of the Board. Any office may be occupied by more than one individual. An officer, if a member of the Exchange at the time of election, shall promptly thereafter dispose of his or her membership by sale or lease, and if by lease, the power to vote must be disposed of by the lease. The Board shall appoint the Chairman, the Chief Executive Officer, and the Chief Regulatory Officer. If the Chairman is neither the Chief Executive Officer nor chosen from among the directors elected by the members, he or she must satisfy the independence criteria for Board membership set forth in Article IV, Section 2 of this Constitution. The President and the *non-regulatory* officers of the Exchange shall be appointed by the Chief Executive Officer, subject to approval of the Board. *The Chief Regulatory Officer shall appoint the officers reporting to him or her, subject to approval of the Board.* Each officer of the Exchange, by his or her acceptance of such office, shall be deemed to have agreed to uphold this Constitution. While no officer of the Exchange shall have any authority to recommend candidates for election to the Board or for appointment by the Board to any committee, the Board or the Nominating & Governance

Committee may solicit the input of any Exchange officer at its own initiative and discretion.

Sec. 2. The Chairman. The Chairman shall preside at all meetings of the Board and of the Board of Executives and shall decide all questions of order, subject, however, to an appeal to the Board; provided, however, that if the Chairman is also the Chief Executive Officer, he or she shall not participate in executive sessions of the Board. If the Chairman is not the Chief Executive Officer, he or she shall act as liaison officer between the Board and the Chief Executive Officer. In addition to his or her usual duties, the Chairman shall make an Annual Report on the Exchange's activities to a Plenary Session.

Sec. 3. The Chief Executive Officer. Subject to the authority of the Board, *and to the functional separation of the regulatory functions of the Exchange as described in this Constitution,* the Chief Executive Officer of the Exchange shall be responsible for the management and administration of the affairs of the Exchange.

Sec. 4. Chief Regulatory Officer and Other Officers.

(a) Chief Regulatory Officer. Subject to the authority of the Board and the Regulatory Oversight & Regulatory Budget Committee, and to the administrative standards and policies established by the Chief Executive Officer made applicable to the Chief Regulatory Officer by the Regulatory Oversight & Regulatory Budget Committee, the Chief Regulatory Officer shall be responsible for the management and administration of the regulatory functions of the Exchange.

(b) Other Officers. The President and other officers shall have such functions and responsibilities as the Chief Executive Officer may from time to time assign, subject to the approval of the Board, and, in the case of senior regulatory personnel, subject to the specific oversight and control of the Regulatory Oversight & Regulatory Budget Committee.

Sec. 5. Absence, Inability to Act or Vacancy in Office of the Chairman. In case of the absence, inability to act or vacancy in office of the Chairman of the Board, such other person or persons as the Board, by the affirmative vote of a majority of the entire Board, may designate shall assume all the functions and discharge all the duties of the Chairman.

Sec. 6. Removal. Any officer of the Exchange may be removed, either with or without cause, by the affirmative vote of a majority of the entire Board.

New York Stock Exchange, Inc.

Rules

Rule 16

Liability of Exchange Relating to Operation of ITS and Pre-Opening Application

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(B)(a) For the convenience of members on the Floor, the Exchange shall furnish employees, known as "ITS clerks", who will, on behalf of such members, send and receive through the System commitments and obligation to trade, pre-opening notifications and responses thereto. All errors and omissions made by one or more ITS clerks with respect to any single System Transaction or proposed System Transaction shall give rise to a single claim against the Exchange by the on-Floor member who instructed the ITS clerk or clerks who made the errors or omissions for all loss, cost, damage or expense (hereinafter called "loss") suffered by such member, or any other member or member organization for which he acted, as a result of such error and omissions, but only to the extent and as provided in this paragraph (B), and the Exchange shall be free to assert any defense to such claim it may have. No claim shall arise as to errors or omissions which are found to have resulted from any failure by a member (whether or not such member is a party to the claim against the Exchange pursuant to this paragraph (B)) to place or cancel an instruction clearly and accurately with the ITS clerk on a timely basis, in writing on such form or forms as the Exchange may provide for such purpose, and containing such information as may be required by the Exchange from time to time in connection with such instruction.

In addition, no claim shall be allowed if, in the opinion of the arbitration panel provided for in subparagraph (c) of this paragraph (B), the member making such claim did not take promptly, upon discovery of the error or omission, all proper steps to correct such error or omission and to establish and mitigate the loss resulting therefrom.

Further, it shall be the responsibility of the member on the Floor who places an instruction with an ITS clerk to keep abreast of the status of that instruction. The ITS clerk shall only be responsible to respond, as promptly as possible, to the member's inquiry concerning the status of his instruction. No claim shall be allowed which is based on a member's assertion that he was not made aware of the status of his instruction and thus failed to take further appropriate action.

(b) Any claim for loss arising from errors or omissions of an ITS clerk or clerks shall be presented in writing to the Exchange no later than the opening of trading on the next business day following the day on which the error or omission giving rise to the loss occurred or within such longer period as the Exchange shall consider equitable under the circumstances.

(c) All disputed claims shall be referred for binding arbitration to an arbitration panel and the decision of a majority of the arbitrators selected to hear and determine the controversy shall be final and there shall be no appeal to the Board of Directors from the decision of such panel. The arbitration panel shall be composed of an odd number of panelists. Each of the parties to the dispute shall select one member or allied member to serve as panelist on the arbitration panel. The panelists so selected shall then select one or more additional panelist(s); provided that the additional panelist(s) so selected are either members or allied members of the Exchange, and provided further that no member of the arbitration panel may be a person with a direct or indirect financial interest in the claim. In the event that the initial panelists selected by the parties to the dispute cannot agree on the selection of the additional panelist or panelists, as the case may be, then in that event such additional panelist(s) shall be appointed by a [Floor Director] *BOE Floor Representative* who has no direct or indirect financial interest in the claim. Each party to the dispute may make oral and written submissions and present witnesses to the arbitration panel.

Rule 22

Disqualification Because of Personal Interest

(a) No member of the Board of Directors *or of the Board of Executives* or of any committee authorized by the Board shall participate (except to the extent of testifying at the request of such Board or of such committee) in the investigation or consideration of any matter relating to any member, allied member, approved person, or member organization with knowledge that such member, allied member, approved person, or member organization is indebted to such director or committee member, or to their member organization or any participant therein, or that they, their member organization or any participant therein is indebted to such member, allied member, approved person, or member organization, excluding, however, any indebtedness arising in the ordinary course of

business out of transactions on any exchange, out of transactions in the over-the-counter markets, or out of the lending and borrowing of securities.

(b) No person shall participate in the adjudication of any matter in which they are personally interested.

Rule 37

Visitors

Visitors shall not be admitted to the Floor of the Exchange except by permission of an Officer of the Exchange, a Senior Floor Official, Executive Floor Official, a Floor Governor, or a [Floor Director] *BOE Floor Representative* between the hours of 10:00 a.m. and 3:30 p.m. Approval of an Exchange Officer or a [Floor Director] *BOE Floor Representative* (or Senior Floor Official, Executive Floor Official, or Floor Governor in the absence of the [Floor Directors] *BOE Floor Representatives*) is required to bring visitors onto the Floor 30 minutes before or after the opening and 30 minutes prior to closing.

Rule 38

Communications

Communications or announcements shall not be posted on the bulletin board without the consent of the [Chairman of the Board] *Chief Executive Officer,* or a person authorized by the Exchange to give such consent.

Rule 46

Floor Officials—Appointment

(a) Each [Director who is active on the Floor] *member of the Board of Executives who represents the groups referenced in clauses (ii) and (iii) of Article V, Section 2(b) of the Constitution shall be a BOE Floor Representative and* shall be [appointed] *approved* as a Floor Official.

(b) The Chairman, in consultation with the [Floor Directors] *BOE Floor Representatives* and with the approval of the Board, shall, at the annual meeting of the Board of Directors or at such other time as may be deemed necessary:

(i) designate as Floor Officials such other members as he may determine, who shall perform such duties as are prescribed by the Rules of the Board to serve at the pleasure of the Board of Directors or until the next annual election of the Exchange and their successors are appointed and take office.

(ii) designate twenty such other members as Floor Governors, who shall be empowered to perform any duty, make any decision or take any action assigned to or required of a [Floor Director] *BOE Floor Representative* as are prescribed by the Rules of the Board or as may be designated by the Board.

For purposes of this rule, a Floor Governor, by virtue of his appointment as such, shall also be deemed to be a Floor Official, and, therefore empowered to perform such duties as are specifically prescribed by the Rules of the Board or as may be designated by the Board regarding Floor Officials.

* * * * *

Rule 51

Hours for Business

Except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for the transaction of business on every business day, excluding Saturdays, (a) for a 9:30 a.m. to 4:00 p.m. trading session and (b) for the purposes of "Off-Hours Trading" (as Rule 900 (Off-Hours Trading: Applicability and Definitions) defines that term), during such hours as the Exchange may from time to time specify.

Except as may be otherwise determined by the Board of Directors, the [Chairman of the Board] *Chief Executive Officer* shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, and to determine the duration of any such halt, suspension or closing, when he deems such action to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. In considering such action, the [Chairman of the Board] *Chief Executive Officer* shall consult with [the Vice Chairman, if available, and]such available [Floor Directors] *BOE Floor Representatives* as he deems appropriate under the circumstances. The [Chairman of the Board] *Chief Executive Officer* shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

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Rule 103

Registration of Specialists

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Supplementary Material:

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.11 Temporary Reallocation of Stocks.—The [Chairman, Vice Chairman] *Chief Executive Officer* and the [Senior Floor Director] *two most senior BOE Floor Representatives,* or in the absence from the Floor of [any] *either* of them, the next senior [Floor Director] *BOE Floor Representative* present on the Floor, acting by a majority shall have the power to reallocate temporarily any stock on an emergency basis to another location on the Floor whenever in their opinion such reallocation would be in the public interest.

The member to whom a stock has been temporarily reallocated under the provisions of this Rule will be registered as the regular specialist therein until the Board of Directors determines the ultimate location of the security.

Rule 103B

Specialist Stock Allocation

Allocation Policy and Procedures

III. Allocation Panel

Selection

Panel members are nominated by the membership. A selection committee, appointed by the [Floor Directors] *BOE Floor Representatives,* reviews the nominations and recommends panel appointments to the [Floor Directors] *BOE Floor Representatives,* who finalize recommendations for presentation to the QOMC. The selection committee operates in accordance with such guidelines as are established and made known to the membership from time to time. The selection committee and, in turn, the [Floor Directors] *BOE Floor Representatives* seek to develop a representative panel that maximizes professional expertise and broad exposure on the Floor by including members from various types of firms and from diverse locations on the Floor. To the maximum extent possible, the Floor members on the panel are expected to be a core group of experienced, senior professionals, such as former Allocation Committee chairmen, Senior Floor Officials, Executive Floor Officials, and current and former Floor Governors.

In the case of allied members and representatives of institutional investor organizations, the allied member organization and the institutional investor organization are appointed to the panel. The individual representative is then selected by the organization. A [Floor Director] *BOE Floor Representative* gives guidance to the

organization in selecting an appropriate representative.

Eligibility

Professional expertise and experience are essential to the excellence of the allocation system. Therefore, a Floor member must have a minimum of 5 years experience as a member on the Floor in order to be eligible for appointment to the Allocation Panel. In the case of allied members and representatives of institutional investor organizations, the organization shall select a representative with at least 5 years of trading experience in listed equities and a senior position on the trading desk, and each may designate one alternate who meets the Panel qualifications, subject to approval by the [Floor Directors] *BOE Floor Representatives.*

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V. Policy Notes

Allocation Freeze Policy

In the event that a specialist unit: (i) loses its registration in a specialty stock as a result of proceedings under Exchange Rules 103A, 475 or 476; or (ii) voluntarily withdraws its registration in a specialty stock as a result of possible proceedings under those rules, the unit will be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security ("Allocation Prohibition").

Following the Allocation Prohibition, a second six month period will begin during which a specialist unit may apply for new listings, provided that the unit demonstrates to the Exchange relevant efforts taken to resolve the circumstances that triggered the Allocation Prohibition. The determination as to whether a unit may apply for new listings will be made by Exchange staff, in consultation with the [Floor Directors] *BOE Floor Representatives.* The factors the Exchange will consider will vary depending on the unit's particular situation, but may include one or more steps such as:

—Supplying additional manpower/experience;

—Changes in professional staff;

—Attaining appropriate dealer participation;

—Enhancing back-office staff; and

—Implementing more stringent supervision/new procedures.

* * * * *

Rule 103C

Listed Company Relations Proceedings

(a) A listed company may file with the New Listings & Client Service Division a written notification ("Issuer Notice"), signed by the company's chief executive officer, that it wishes to commence a proceeding whereby the Quality of Markets Committee ("QOMC") shall attempt to mediate and resolve non-regulatory issues that have arisen between the company and its assigned specialist unit. The Issuer Notice shall indicate the specific issues sought to be mediated and resolved, and what steps, if any, have been taken to try to address them before the filing of the Notice.

(b) The QOMC shall refer the Issuer Notice to its Listed Company Relations Subcommittee (the "Subcommittee") which shall consist of [two listed company members of the QOMC, as well as a senior officer and two vice chairman of the Exchange, provided these individuals are also members of the QOMC] *four Board of Executives members (two of whom are representatives of listed companies) and a senior officer of the Exchange.* The Subcommittee shall review the Issuer Notice and shall notify the subject specialist unit that a Listed Company Relations Proceeding ("LCRP") is being commenced pursuant to this rule, and that the LCRP shall run for one year from the date of notice to the specialist unit, unless concluded earlier by the listed company. The specialist unit shall be provided with a copy of the Issuer Notice, and shall be given two weeks within which to submit a written response to the Subcommittee.

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Rule 123A

Miscellaneous Requirements

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Broker's Obligation In the Handling of Certain Orders

.45 Members' off-floor orders.—Two persons consisting of two [Floor Directors] *BOE Floor Representatives,* or in the absence of any of them, Floor Governors, Senior Floor Officials, or Executive Floor Officials in the order of seniority, have the authority to limit or ban the execution of off-Floor orders for accounts in which members or member organizations have an interest.

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Rule 123D

Openings and Halts in Trading

(1) Delayed Openings/Halts in Trading—

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All indications require the supervision and approval of a Floor Official. If it involves a bank or brokerage stock, a [Floor Director] *BOE Floor Representative's* approval is required. If a [Floor Director] *BOE Floor Representative* is unavailable, a Floor Governor's or Senior Floor Official's approval must be obtained. In addition to the mandatory criteria, specialists should use their judgment as to when it is appropriate to seek Floor Official approval for disseminating a price indication.

Mandatory indication policy applies to a foreign-listed security only if the opening price will be at a significant price change (see chart above) from its closing price in the foreign market or the current price in the foreign market.

Mandatory indications for convertible preferred stocks are only required if an indication was disseminated in the underlying common stock.

In this regard the following procedures should be followed for delayed opening and trading halt indications:

The length of time for the dissemination of indications should be in proportion to the anticipated disparity of the opening or reopening price from the prior sale.

The number of indications should increase in proportion to the anticipated disparity in the opening or reopening price, with increasingly definitive, "telescoped" indications when an initial narrow indication spread is impractical.

An indication should be published immediately when trading is halted for a non-regulatory order imbalance. Such indications should be broad enough to allow flexibility, but narrow enough to convey as accurate a picture of supply and demand as possible at the time. In most cases, a final indication with a one point spread would be appropriate. Further telescoping to one-half point could result in unnecessary delay due to a change in the terms of a pivotal order. Even if an indication is not disseminated, specialists should endeavor to provide brokers with an approximate range within which they believe a stock will open.

Tape indications before the opening should be disseminated at 9:15 a.m., if possible, but any tape indications disseminated prior to 9:30 a.m. require the approval of a [Floor Director] *BOE Floor Representative* or Floor Governor, or the approval of a Floor Official if it relates to a spin-off or if trading had been halted and not resumed the prior day.

ITS Pre-Opening Applications must be followed when necessary based upon

the anticipated opening price. For example, a Pre-Opening Notification must be issued if a stock is going to open more than .10 of a point from a composite last sale under $15 or more than .25 of a point from a composite last sale of $15 or higher. The spread in the Pre-Opening Application may not exceed .50 of a point if the consolidated close is under $50 or one point if the consolidated close is $50 or higher with limited exception. If a Pre-Opening Application is required on an opening or any reopening and a tape indication is also issued, the indication satisfies the Pre-Opening Application requirement if it is also sent to the ITS participants by the specialist in the form of Pre-Opening Notification. In that case, the maximum ITS spread would not apply. Three minutes must elapse from the time a Pre-Opening Application is issued, and an additional one minute if subsequent notifications are required, before a stock should open.

As with other openings, tape indications are discretionary for IPO's with the approval of a [Floor Director] *BOE Floor Representative* or Floor Governor except that it is mandatory if the opening price change as measured from the offering price meets the requirements for a mandatory indication.

If an indication is disseminated after the opening bell, it must be considered a delayed opening. In addition, any stock that is not opened with a trade or reasonable quotation within 30 minutes after the opening of business must be considered a delayed opening (except for IPO's) and requires Floor Official supervision, as well as an indication. That 30-minute time frame may only be extended by a [Floor Director] *BOE Floor Representative* on a Floor-wide basis.

More than one indication should be disseminated if an opening will be outside the first indication or if the first indication had a wide spread, especially if the time frame for delayed openings has been extended by the [Floor Director] *BOE Floor Representative.* A reduction in time between indications can be used when multiple indications are disseminated. Generally, a minimum of 10 minutes must elapse between the first indication and a stock's opening as measured by the time the indication appears on the PDU. However, when more than one indication is disseminated, a stock may open five minutes after the last indication provided that at least 10 minutes must have elapsed from the dissemination of the first indication.

With respect to a post-opening trading halt, a minimum of five minutes must elapse between the first indication and a stock's reopening. However, where more than one indication is disseminated, a stock may re-open three minutes after the last indication, provided that at least five minutes must have elapsed from the dissemination of the first indication.

Tape indications must be disseminated with the approval of a Floor Official prior to the opening or reopening in a stock subject to a regulatory or nonregulatory halt in trading or a delayed opening. A Floor Governor should be consulted if a significant price change is anticipated.

A [Floor Director] *BOE Floor Representative* or Floor Governor should be consulted in any case where there is not complete agreement among the Floor Officials participating in the discussion.

Floor Governors should keep apprised of developments when consulted, and should seek the assistance of [Floor Director] *BOE Floor Representatives,* when appropriate, as soon as possible. Floor Governors should be prepared to balance the opportunity for brokers to participate in the opening with the need for timeliness, and should assist in identifying opportunities for opening the security, based upon the shifting supply and demand in conjunction with appropriate specialist participation.

Specialists should make every effort to balance timeliness with the opportunity for customer reaction and participation. Although the correct price based on information available at the time is always the goal, specialists and supervising Floor Governors should recognize customers' desires for a timely opening. When the specialist and Floor Governor agree that all participants have had a reasonable opportunity to participate, the specialist should open the stock.

Once trading has commenced, trading may only be halted with the approval of a Floor Governor or two Floor Officials. A [Floor Director] *BOE Floor Representative,* or in their absence a Senior Floor Governor, should be consulted if it is felt that trading should be halted in a bank or brokerage stock due to a potential misperception regarding the company's financial viability.

Sometimes the Client Service Division is notified by a listed company in advance of publication concerning news which might have a substantial market impact. That Division will immediately notify the Floor Operations Division, which will advise a [Floor Director] *BOE Floor Representative* or Floor Governor, or in their absence a Floor Official.

If Client Service Division makes a recommendation that trading should be halted in a stock pending a public announcement by the company and the [Floor Director] *BOE Floor Representative* or Floor Governor disagrees, he or she should seek the opinion of another [Floor Director] *BOE Floor Representative* or Floor Governor. If the [Floor Director] *BOE Floor Representatives* or Floor Governors are in agreement that trading should not be halted, trading should continue. If one of the two is in agreement with the recommendation to halt trading, then trading should be halted. While the time period may vary from case-to-case as a result of the particular circumstances involved, normally if the announcement is not made within approximately 30 minutes after the delay or halt is implemented, the Exchange may commence the opening or reopening of trading in the stock. Special care is taken to ensure that material non'public information is not disclosed, even inadvertently, as a result of someone overhearing details relating to trading halts or delayed opening situations.

* * * * *

Rule 304

Allied Members and Approved Persons

* * * * *

(f) When an allied member is elected Chairman of the Board [of Directors] *or Chief Executive Officer* or is elected to membership in the Exchange, his allied membership shall terminate.

* * * * *

Rule 308

Acceptability Proceedings

* * * * *

(g) Any person whose application has been disapproved by an Acceptability Committee, or any member of the Board of Directors *or of the Board of Executives* of the Exchange may require a review by the Board of any determination of an Acceptability Committee. A request for review shall be made by filing with the Secretary of the Exchange a written request therefore, within twenty days after notification of the determination of the Acceptability Committee. Upon review, the Board of Directors may sustain any determination, or may modify or reverse any such determination as it deems appropriate. The determination of the Board of Directors shall be final and conclusive action by the Exchange.

Rule 422

Loans of and to Directors, etc.

Without the prior consent of the Board of Directors no member of the Board of Directors *or of the Board of Executives* or of any committee of the Exchange, and no officer or employee of the Exchange shall directly or indirectly make any loan of money or securities to or obtain any such loan from any member organization member, allied member, approved person, employee or any employee pension, retirement or similar plan of any member organization unless such loan be (a) fully secured by readily marketable collateral, or (b) made by a director or committee member to or obtained by a director or committee member from the member organization of which he is a member, allied member or employee or from a member, allied member or employee therein.

Rule 440B

Short Sales

* * * * *

Supplementary Material:

Interpretations of Securities and Exchange Commission and New York Stock Exchange Rules

* * * * *

.19 Exemptions from the requirements of Regulation §–240.10a–2(a). Under amended Regulation §–240.10a–2, if a broker discovers prior to delivery date that a sale was effected pursuant to an order which through error was incorrectly marked "long," the requirements of Regulation §–240.10a–2(a) will not apply provided the exchange on which the transaction took place or the NASD as to a sale which took place in the over-the-counter market is satisfied as to the existence of the conditions described in (i), (ii) and (iii) of Regulation §–240.10a–2(b)(2).

Members should submit all requests to the Exchange for exemptions to the [Floor Directors] *BOE Floor Representatives* as promptly as possible after discovery of the errors involved. Such requests may be made in writing, or by telephone or telegraph provided they are promptly confirmed in writing by the member or member organization. Out-of-town organizations may submit their requests through their New York correspondents.

In order that the Exchange may make a proper determination in each case, it is imperative that all requests contain sufficient information to indicate clearly that the conditions described in (i), (ii) and (iii) of Regulation §–240.10a–2(b)(2) actually obtain.

* * * * *

Rule 476

Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others

* * * * *

(b) All proceedings under this Rule, except as to matters referred to in paragraph (c), shall be conducted at a Hearing in accordance with the provisions of this Rule and shall be held before a Hearing Panel consisting of at least three persons: A Hearing Officer, who shall be Chairman of the Panel, with the remainder of the Panel being members of the Hearing Board.

The Chairman [of the Board of the Exchange], subject to the approval of the Board of Directors, shall from time to time appoint a Hearing Board to be composed of such number of members and allied members of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman [of the Board of the Exchange] shall deem necessary. The members of the Hearing Board shall be appointed annually and shall serve at the pleasure of the Board of Directors. The Chairman [of the Board of the Exchange], subject to the approval of the Board of Directors, shall also designate from among the officers and employees of the Exchange a Chief Hearing Officer and one or more other Hearing Officers who shall have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as Hearing Officers at the pleasure of the Board of Directors.

* * * * *

(f) The Division or Department of the Exchange which brought the charges, the respondent, or any member of the Board of Directors or of the Board of Executives of the Exchange may require a review by the Board of any determination or penalty, or both, imposed by a Hearing Panel. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served upon the respondent. The Secretary of the Exchange shall give notice of any such request for review to the Division or Department of the Exchange which brought the charges and any respondent affected thereby.

Any review by the Board of Directors shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel. Upon review, the Board of Directors, by the affirmative vote of a majority of the Directors then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the provisions of this Rule, as it deems appropriate. Unless the Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

Notwithstanding the foregoing, if either party upon review applies to the Board of Directors for leave to adduce additional evidence, and shows to the satisfaction of the Board of Directors that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Hearing Panel, the Board of Directors may remand the case to a Hearing Panel for further proceedings, in whatever manner and on whatever conditions the Board of Directors considers appropriate.

(g) In lieu of the procedures set forth in paragraph (d) above, a Hearing Panel, at a Hearing called for that purpose, shall also determine whether a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization has committed any one or more of the offenses specified in paragraph (a) above, on the basis of a written Stipulation and Consent entered into between the respondent and any authorized officer or employee of the Exchange. Any such Stipulation and Consent shall contain a stipulation with respect to the facts, or the basis for findings of fact by the Hearing Panel; a consent to findings of fact by the Hearing Panel, including a finding that a specified offense had been committed; and a consent to the imposition of a specified penalty.

Notice of any Hearing held for the purpose of considering a Stipulation and Consent shall be served upon the respondent as provided in paragraph (d) above. In any such Hearing, if the Hearing Panel determines that the respondent has committed an offense, it may impose the penalty agreed to in such Stipulation and Consent or any penalty which is less severe than the stipulated penalty, as it deems appropriate. In addition, a Hearing Panel may reject such Stipulation and Consent.

Such rejection shall not preclude the parties to the proceeding from entering into a modified Stipulation and Consent which shall be presented to a Hearing Panel in accordance with the provisions of this subsection, nor shall such rejection preclude the Exchange from bringing or presenting the same or different charges to a Hearing Panel in accordance with the provisions of paragraph (d) above. The Exchange shall keep a record of any Hearing conducted under this Rule and a written notice of the result setting forth the requirements contained in Section 6(d)(1) of the Securities Exchange Act of 1934 shall be served on the parties to the proceeding.

The determination of the Hearing Panel and any penalty imposed shall be final and conclusive, twenty-five days after notice thereof has been served upon the respondent in the manner provided in paragraph (d) above, unless a request to the Board of Directors for review of such determination and/or penalty is filed as hereinafter provided. If such a request to the Board of Directors for review is filed as hereinafter provided, any penalty imposed shall be stayed pending the outcome of such review.

Any member of the Board of Directors *or of the Board of Executives* of the Exchange may require a review by the Board of any determination or penalty, or both, imposed by a Hearing Panel in connection with a Stipulation and Consent. In addition, the Division or Department of the Exchange which entered into the written consent may require a review by the Board of Directors of any penalty which is less severe than the stipulated penalty. The respondent or the Division or Department which entered into the written consent may require a review by the Board of Directors of any rejection of a Stipulation and Consent by the Hearing Panel.

A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within twenty-five days after notice of the determination and/or penalty is served on the respondent. The Secretary of the Exchange shall give notice of any such request for review to the Division or Department of the Exchange involved in the proceeding and any respondent affected thereby.

Any review by the Board of Directors shall consist of oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel. Upon review, the Board of Directors, by the affirmative vote of a majority of the Directors then in office, may fix and impose the penalty agreed to in such Stipulation and Consent or any penalty which is less severe than the stipulated penalty, or may remand for further proceedings. Unless the Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

* * * * *

Rule 476A

Imposition of Fines for Minor Violation of Rules

* * * * *

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Division or Department of the Exchange taking the action not later than the date by which such determination must be contested, a written response meeting the requirements of an "Answer" as provided in Rule 476(d), at which point the matter shall become a "disciplinary proceeding" subject to the provisions of Rule 476. In any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the rule violation(s) charged, the Panel shall (i) be free to impose any one or more of the disciplinary sanctions provided in Rule 476 and (ii) determine whether the rule violation(s) is minor in nature. The Division or Department of the Exchange which commenced the action under this Rule, the person charged, and any member of the Board of Directors *or of the Board of Executives* of the Exchange may require a review by the Board of any determination by the Hearing Panel by proceeding in the manner described in Rule 476(f).

* * * * *

Rule 499

Suspension From Dealings or Removal From List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership.

Securities admitted to the list may be suspended from dealings or removed from the list at any time.

Supplementary Material:

.70 Procedure for Delisting.—

a. If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's web site. The notice to the issuer shall also inform the issuer of its right to a review of the determination by *the Committee specified in Section 12(b)(1) of Article IV of the Exchange's Constitution* [a Committee of the Board of Directors of the Exchange (a majority of the members of such Committee voting on each determination must be public Directors)], provided a written request for such review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice.

* * * * *

c. If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. *Because Section 12(b)(1) of Article IV of the Constitution specifies that a majority of the members of the Committee voting on a matter shall be members of the Exchange's Board of Directors, the* [The] Chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the *Committee members* [industry Directors present] will be voting on the matter, although all *Committee members* [directors] will be entitled to participate in the discussion. The Committee's review and final decision shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties.

* * * * *

Listed Company Manual

Section 804.00 Procedure for Delisting

• If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin daily dissemination of ticker and information notices identifying the security's status, and include similar information on the Exchange's Web site.

• The notice to the issuer shall also inform the issuer of its right to a review of the determination by *the Committee specified in Section 12(b)(1) of Article IV of the Exchange's Constitution* [a Committee of the Board of Directors of the Exchange (a majority of the members of such Committee voting on each determination must be public Directors)], provided a written request for such a review is filed with the Secretary of the Exchange within ten business days after receiving the aforementioned notice.

* * * * *

• If a review is requested, the review will be scheduled for the first Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange, unless the next subsequent Review Day must be selected to accommodate the Committee's schedule. *Because Section 12(b)(1) of Article IV of the Constitution specifies that a majority of the members of the Committee voting on a matter shall be members of the Exchange's Board of Directors, the* [The] Chairman of the Committee will disclose to the company and the staff at the commencement of the review which of the *Committee members* [industry Directors present] will be voting on the matter, although all *Committee members* [directors] will be entitled to participate in the discussion. The Committee's review and final decision shall be based on oral argument (if any) and the written briefs and accompanying materials submitted by the parties.

* * * * *

Rule 792

Days and Hours for Options Trading

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(c) The [Chairman, Vice Chairman and the Senior Floor Director or, in the absence from the Floor of any of them, the next senior Floor Director] *Chief Executive Officer and the two most senior BOE Floor Representatives, or in the absence from the Floor of any of them, the next senior BOE Floor Representative* present on the Floor, acting by a majority shall have the power to suspend trading in all option contracts whenever in their opinion such suspension would be in the public interest. A special meeting of the Board of Directors to consider the continuation or termination of such suspension or closing the market shall be held as soon thereafter as a quorum of Directors can be assembled.

* * * * *

Rule 800

Basket Trading: Applicability and Definitions

Applicability of 800 Series

The Rules in this 800 series (Rules 800 through 817) shall apply to (i) all Exchange contracts made on the Exchange through the "ESP Service" (as this Rule defines that term) and (ii) the handling of orders, and the conduct of accounts and other matters, relating to baskets executed through the ESP Service by any member or member organization. As modified by this Rule 800, all other Exchange Rules shall also so apply, except that the following shall not so apply:

* * * * *

(F) references in incorporated Rules to "Floor Officials" shall refer solely to "Floor Governors" and "[Floor Directors] *BOE Floor Representatives*".

* * * * *

Rule 808

Basket Book Dealers

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Supplementary Material:

Temporary Reallocation of Baskets

.10 The [Chairman] *Chief Executive Officer* or, in his absence, such Exchange Officer(s), as the [Chairman] *Chief Executive Officer* may designate, or, alternatively, a majority, but not fewer than two, of the [Floor Directors] *BOE Floor Representatives* then available on the Floor, may determine to reallocate temporarily any basket on an emergency basis to another member or member organization on the Floor whenever in their opinion such reallocation would be in the public interest.

* * * * *

Rule 816

Discontinuous Auction Markets; Basket Trading Halts

Discontinuous Auction Markets

(a) Whenever such market conditions as the Exchange may from time to time specify are present, the Exchange shall declare a discontinuous auction market. Whenever the [Chairman] *Chief Executive Officer* or, in his absence, such other Exchange Officer(s) as the [Chairman] *Chief Executive Officer* may designate, or, alternatively, a majority, but not fewer than two, of the [Floor Directors] *BOE Floor Representatives* then available on the Floor, determine that market conditions make it unreasonable to conduct basket trading pursuant to regular auction procedures, or, pursuant to such guidelines as the Exchange may from time to time prescribe, whenever two Floor Governors make such a determination, a discontinuous auction market shall be declared. The Basket Book Dealer shall monitor market conditions and adherence to the guidelines and shall conduct the discontinuous auction market as follows:

(i) Within five minutes from the time at which the discontinuous auction market is declared, the Basket Book Dealer will disseminate an initial indication of interest.

(ii) The Basket Book Dealer will periodically disseminate any change in any indication of interest or any superior indication of interest, and, if he has not updated an indication of interest within 15 minutes from the previous update, he will indicate that no change has occurred.

The [Chairman] *Chief Executive Officer*, the [Chairman] *Chief Executive Officer*-designated Officer(s), two [Floor Directors] *BOE Floor Representatives* or two Floor Governors may terminate the discontinuous auction market after determining that the conditions that precipitated the discontinuous auction market no longer exist.

The Basket Book Dealer may open or reopen the regular auction market in the basket only upon the later of:

(i) 15 minutes after the initial indication of interests, and

(ii) Five minutes after he disseminates a revised or updated indication of interest.

The Exchange may from time to time prescribe different discontinuous auction market time parameters. The existence of a discontinuous auction market suspends the obligations of specialists, Basket Book Dealers and Competitive Basket Market-Makers to establish, maintain and communicate component stock, mini-basket and basket quotations.

Basket Trading Halts

(b) In addition to any halt in basket trading pursuant to Rule 80B (Trading Halts Due to Extraordinary Market Volatility) as Rule 800 incorporates that Rule into these Basket Rules, basket trading through the ESP Service shall halt whenever the [Chairman] *Chief Executive Officer* or, in his absence, such other Exchange Officer(s) as the [Chairman] *Chief Executive Officer* may designate, or, alternatively, a majority, but not fewer than two, of the [Floor Directors] *BOE Floor Representatives* then available on the Floor, determines that market conditions warrant such a halt.

Supplementary Material:

.10 Prior to disseminating any change in an indication of interest or superior indication of interest, or indicating that no change has occurred, pursuant to paragraph (a)(ii) of this Rule, the Basket Book Dealer may execute paired-off buy and sell basket orders at a price that a Floor Governor has approved.

[FR Doc. 04–5112 Filed 3–5–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49342; File No. SR–PCX–2004–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. To Allow Ratio Orders to be Executed at the Exchange

March 1, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing amend its rules to allow ratio orders to be executed at the Exchange. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.62 lists and defines several types of orders that are permissible at the PCX. Of the several types of orders defined, three are complex orders: spread, straddle and combination orders.[3] The PCX proposes to add another type of complex order, ratio orders, to the list of orders included in Rule 6.62.[4] A ratio order is either a spread, straddle, or combination order in which the stated number of option contracts to buy (sell) is not equal to the stated number of option contracts to sell (buy), provided that the number of contracts differs by a permissible ratio. Under the PCX proposal, a permissible ratio is any ratio that is equal to or greater than one to three (.333) or less than or equal to three to one (3.0). For example, a one to two (.5) ratio, a two to three (.667) ratio, or a two to one (2.0) ratio is permissible, whereas a one to four (.25) or four to one (4.0) ratio is not.

The PCX believes that ratio orders are merely slight variations on the types of complex orders currently permitted at the PCX. For this reason, the PCX believes that it is appropriate to treat ratio orders in a manner similar to the existing complex orders that currently permitted to trade at the PCX. Accordingly, the PCX proposes to have ratio orders within the permissible ratio follow the current priority rules under PCX Rule 6.75(h) Commentary .04.

Specifically, PCX Rule 6.75(h) Commentary .04 sets forth the proper trading procedures for combination, spread and straddle orders. Under the PCX proposal, ratio orders that are equal to or greater than one to three (.333) or less than or equal to three to one (3.0) will be treated the same as combination, spread and straddle orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[3] These types of orders are defined in PCX Rule 6.62(d), (g), and (h), respectively.

[4] The proposed rule change is based on the rules of the Chicago Board Options Exchange, Inc., Rules 6.45 and 6.53.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder, because it (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following

[7] 15 U.S.C. 78(s)(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2004–09 and should be submitted by March 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5054 Filed 3–5–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49340; File No. SR–PCX–2004–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. to Facilitate Listing and Trading of Options and FLEX Options of Fixed-Income Exchange-Traded Fund Shares

February 27, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I and II below, which items have been prepared by PCX. On February 18, 2004, the PCX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, has been filed by PCX under Rule 19b–4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the definition of Exchange-Traded Fund Shares ("ETFs") in order to facilitate the listing and trading of options and FLEX options on fixed-income ETFs. Proposed new language is *italicized;* deleted language is in [brackets.]

* * * * *

Rule 3.6(a)—(c)—No change.

Commentary:

.01—.05—No change.

.06 Securities deemed appropriate for options trading shall include shares or other securities ("Exchange-Traded Fund Shares") that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market security, and that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities, provided:

(a)

(i) The Exchange-Traded Fund Shares meet the criteria and guidelines for underlying securities set forth in Rule 3.6(a); or

(ii) The Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from the investment company at a price related to the net asset value. In addition, the investment company shall provide that fund shares may be created even though some or all of the securities needed to be deposited have not been received by the unit investment trust or the management investment company, provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the fund or unit trust prospectus; and

(b)

(i) Any non-U.S. component *securities (including fixedincome)* [stocks] in the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(ii) *Securities (including fixed income)* [stocks] for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and

(iii) *Securities (including fixed income)* [stocks] for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.

.07—No change.

* * * * *

Rule 6.1 (a)—No change.

(b) Definitions.The following terms as used in Rule 6 shall, unless the context otherwise indicates, have the meanings herein specified:

(1)—(31)—No change.

(32) Exchange-Traded Fund Share—For purposes of these Rules, the term Exchange-Traded Fund Share shall include Exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities (*including fixed income securities*) based on an index or a portfolio of securities.

* * * * *

Rules 8.1—8.17 Reserved.

* * * * *

Rule 8.100 (a)—Applicability. Rules 8.100 et seq. are applicable only to Flexible Exchange Options. Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Rule 4.1, Flexible Exchange Options are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

[(1) Flexible Exchange Options on the following indexes are approved for trading on the Exchange:

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Tania J.C. Blanford, Regulatory Policy, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 17, 2004. ("Amendment No. 1"). In Amendment No. 1, the PGX made technical corrections to the proposed rule change.

[4] 17 CFR 240.19b–4(f)(6). For purposes of determining the effective date and calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 18, 2004, the date PCX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

(A) the Wilshire Small Cap Index.
(B) the PCX Technology Index.
(C) the Dow Jones Co. Taiwan Index.
(D) the Morgan Stanley Emerging Growth Index.
(2) Flexible Exchange Options on the following Exchange-Traded Fund Shares, as defined in Rule 6.1(b)(32), are approved for trading on the Exchange:
(A) Nasdaq-100 Index Tracking Stock (Symbol: QQQ)]
(b)—(d)—No change.
* * * * *
Rule 8.101(a)—(b)—No change.
* * * * *
Rule 8.102(a)—(d)—No change.
(e) Special Terms for FLEX Equity Options.
(1) *Reserved.* [FLEX Equity Option transactions are limited to transactions in options on:
(A) the Wilshire Small Cap Index.
(B) The PCX Technology Index
(C) The Dow Jones Co. Taiwan Index.
(D) The Morgan Stanley Emerging Growth Index.]
(3)—(4)—No change.
(f)—No change.
* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX Rule 6.1(b)(32) defines ETFs as securities representing "open-end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities." The purpose of the proposed rule change is to amend this definition in order to facilitate the listing and trading of options and FLEX options on investment products that are based on an index of fixed-income securities. The Exchange, therefore, proposes to add the words "including fixed income securities" to the definition of ETFs. The proposed rule change will allow the listing of the following options series of iShares Trust: iShares 1–3 Year Treasury Bond Fund, iShares 7–10 Year Treasury Bond Fund, iShares Lehman 20+ Year Treasury Bond Fund, and iShares GS $ InvesTop Corporate Bond Fund.

The Exchange also proposes to delete obsolete language from PCX Rules 8.100(a) and 8.102(e) to facilitate the addition of options on fixed-income ETFs. These rules currently delineate each FLEX Options product that is listed and traded on the Exchange. As the products listed are no longer traded on the Exchange, the PCX proposes to make an administrative change and delete the obsolete language referencing FLEX Options product names.[5]

This proposed rule change is substantially similar to the rule change proposals filed by the Chicago Board Options Exchange[6] ("CBOE") and the International Securities Exchange, Inc. ("ISE"),[7] which were approved by the Commission. Thus, the Exchange is proposing to modify PCX Rule 6.1(b)(32) and related PCX rules to substantially mirror the proposed rule changes submitted by the BOE and ISE.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the objectives of section 6(b)(5) of the Act,[8] in general, that it will promote just and equitable principles of trade to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

[5] The Exchange notes that PCX intends to conform its rules to those of other exchanges by not referencing product names available for trading. *See e.g.*, CBOE Rule 24A–1.

[6] *See* Securities Exchange Act Release No. 46435 (August 29, 2002), 67 FR 57046 (September 6, 2002) (File No. SR–CBOE–2002–47).

[7] *See* Securities Exchange Act Release No. 48226 (July 25, 2003), 68 FR 45298 (August 1, 2003) (File No. SR–ISE–2003–19).

[8] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] PCX has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[13] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that waiving the pre-filing requirement and accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. The Commission notes that the ISE and the CBOE have already adopted substantially similar rules to trade options on fixed income ETFs. For these reasons, the Commission designates the

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *See supra* note 9.

[12] *See supra* note 10.

[13] 17 CFR 240.19b–4(f)(6)(iii).

proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2004–06. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–PCX–2004–06 and should be submitted by March 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–5115 Filed 3–5–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4612]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

A closed meeting of the U.S. Advisory Commission on Public Diplomacy will be held at the U.S. Department of State in Washington, DC on March 10, 2004 at 9 a.m.

The Commission was reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000). The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold C. Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC; Ambassador Elizabeth F. Bagley of Washington, DC; Charles "Tre" Evers III of Florida; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

For more information, please contact Matt J. Lauer at (202) 203–7880.

Dated: February 26, 2004.

Matt J. Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 04–5144 Filed 3–5–04; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 4636]

Shipping Coordinating Committee; Notice of Change in Meeting Agenda

As announced in meeting notice 4609 published on March 1, 2004, the Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, March 23rd, 2004, in Room 2415 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the upcoming 51st session of the Marine Environment Protection Committee (MEPC 51). Following discussion of the agenda items related to MEPC 51, the SHC will discuss the outcome of the Diplomatic Conference on Ballast Water Management for Ships by the International Maritime Organization (IMO) held at IMO Headquarters in London, England from February 9th to 13th, 2004.

Documents associated with the Diplomatic Conference will be available in Adobe Acrobat format on CD-ROM. To request documents please write to the address provided below or by following the Internet link: *http://www.uscg.mil/hq/g-m/mso/imomepc.htm*. Interested persons may seek information by writing to Lieutenant Junior Grade Mary Stewart, Commandant (G–MSO–4), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1601, Washington, DC 20593–0001 or by calling (202) 267–2079.

Dated: March 1, 2004.

Steven D. Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–5145 Filed 3–5–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice: 4648]

Removal of the Restriction on the Use of United States Passports for Travel To, In or Through Libya

The restriction on the use of U.S. passports for travel to, in, or through Libya set forth in Public Notice 4542 of November 24, 2003 (68 FR 65981), is hereby revoked.

The public notice shall be effective from the date of signature.

Dated: February 23, 2004.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 04–5146 Filed 3–5–04; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Seven Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on seven currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before May 7, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith D. Street at the above address, on

(202) 267–9895, or by e-mail at: *July.Street@faa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. *2120–0018, Certification Procedures for Products and Parts FAR 21.* 14 CFR part 21 prescribes certification procedures for aircraft, aircraft engines, propellers, products and parts. The information collected is used to determine compliance and applicant eligibility. The respondents are aircraft parts designers, manufacturers, and aircraft owners. The current estimated annual reporting burden is 44,101 hours.

2. *2120–0022, Certificate: Mechanics, Repairmen, Parachute Riggers, and Inspection Authorizations—FAR Part 65.* Title 49 U.S.C. sections 44702 and 44703 authorize the issuance of airman certificates. FAR part 65 prescribes requirements for mechanics, repairmen, parachute riggers, and inspection authorizations. The information collected shows applicant eligibility for certification. The current estimated annual reporting burden is 34,432 hours.

3. *2120–0056, Report of Inspections Required by Airworthiness Directives, 14 CFR Part 39.* Airworthiness directives are regulations issued to require action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate for the unsafe condition. The respondents are aircraft owners and operators. The current estimated annual reporting burden is 2,144 hours.

4. *2120–0067, Air Taxi and Commercial Operator Activity Survey.* Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier sponsor apportionments as specified by the Airport Improvement Program (AIP), and 49 U.S.C. part A Air Commerce Safety, and part B, Airport Development and Noise. The current estimated annual reporting burden is 750 hours.

5. *2120–0508, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.* Date of manufacture and compliance status stamped on the nameplate of each turbojet engine permit rapid determination by FAA inspectors, owners, and operators whether an engine can be legally installed and operated on an aircraft within the United States. The current estimated annual reporting burden is 100 hours.

6. *2120–0569, Airports Grants Program.* The FAA collects data from airport sponsors and planning agencies in order to administer the Airports Grants Program. Data is used to determine eligibility, ensure proper use of Federal finds and ensure project accomplishments. The current estimated annual reporting burden is 67,714 hours.

7. *2120–0631, Terrain Awareness and Warning System (TAWS).* This rule mandates that all turbine powered airplanes of 6 or more passenger seating carry a Terrain Awareness and Warning System (TAWS). TAWS is a passive, electronic safety device located in the airplane's avionics bay. TAWS alerts pilots when there is terrain the airplane's flight path. Since this is a 100% passive and electronic collection, the estimated annual hourly reporting burden is estimated at the minimum of 1 hour.

Issued in Washington, DC on March 2, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–5151 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–13]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 29, 2004.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X–XXXXX) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on March 3, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2004–16911.

Petitioner: American Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(c)(1) and (2).

Description of Relief Sought: To permit an American Airlines, Inc., check airman to take a rest period during the cruise portion of a flight leg

in which the check airman is observing the operating experience of a qualifying pilot.

[FR Doc. 04–5150 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on March 23, 2004, at 1 p.m.

ADDRESSES: The meeting will be held in Conference Room 806, Federal Office Building 10A (the "FAA Building"), 800 Independence Ave., SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee on Air Carrier Operations to be held on March 23, 2004.

The agenda will include a report from the All Weather Operations Working Group. As tasked by ARAC, the Working Group is to harmonize positions on issues related to low-visibility operations. The ARAC Working Group will identify harmonization issues in the following areas and will work to reach and document consensus on those issues: Maintenance of harmonization of all weather operations criteria based on experience gained from recent certification programs and operations; evolution of criteria to support Global Navigation Satellite System Landing Systems (GLS); new technologies that are being applied to low visibility operations; and complete harmonization of operating minima criteria and implementation processes.

Attendance is open to the interested public but may be limited by the space available. Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. If you are in need of assistance or require a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC on March 2, 2004.

Matthew J. Schack,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 04–5162 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2004–17231]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GREY GHOST.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17231 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before April 7, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17231. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GREY GHOST is:

Intended Use: "Charter Fishing."

Geographic Region: The Northeastern U.S. from New Jersey to Maine.

Dated: March 3, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–5118 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2004–16964 (Notice No. 04–1)]

Information Collection Activities

AGENCY: Research and Special Programs Administration.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration (RSPA, we) invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request renewal from the

Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before May 7, 2004.

ADDRESSES: You may submit comment by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the Department of Transportation (DOT) electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001.
- *Hand delivery:* To the Docket Management System, Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number RSPA–2004–16964 (Notice No. 04–1) for this notice at the beginning of your comment. Comments are to be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. Internet users may access all comments received by the Department of Transportation at *http://dms.dot.gov.* Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the address listed above.

Direct requests for a copy of an information collection to Deborah Boothe or T. Glenn Foster, at the U.S. Department of Transportation, Office of Hazardous Materials Standards (DHM–10), 400 Seventh St., SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10) at the address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78) or you may visit *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations requires RSPA to provide the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections RSPA is submitting to OMB for renewal and extension. These collections are contained in 49 CFR parts 110 and 130 and the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register.**

RSPA requests comments on the following information collections:

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 178 and 180 of the HMR involving the manufacture, qualification, maintenance and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) *Registration statements:* Cargo tank manufacturers and repairers, and cargo tank motor vehicle assemblers are required to register with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The registration statements are used by DOT to ensure that these persons possess the knowledge and skills necessary to perform the required functions and that they are performing the specified functions in accordance with the applicable regulations.

(2) Requalification and maintenance reports: These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained and are in proper condition for the transportation of hazardous materials in accordance with the HMR.

(3) Manufacturers' data reports, certificates and related papers: These reports are prepared by cargo tank manufacturers and certifiers, and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden;

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 102,021.

Frequency of Collection: Periodically.

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections, tests and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the HMR. It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use, and to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials. Applicable sections are as follows: § 173.32—requirements for the use of portable tanks; § 173.35—hazardous materials in intermediate bulk containers; § 178.245–6—certification markings for DOT–51 portable tanks; § 178.245–7—manufacturer's data report for DOT–51 portable tanks: § 178.255–14—certification markings for DOT–60 portable tanks; § 178.255–15—manufacturer's data report for DOT–60 portable tanks; § 178.270–14—certification marking of IM portable tanks; § 178.801—testing, retesting and recordkeeping for intermediate bulk containers; and § 180.352—periodic retests and inspections for intermediate bulk containers.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Recordkeeping:

Number of Respondents: 8,770.

Total Annual Responses: 86,100.

Total Annual Burden Hours: 66,390.

Frequency of collection: On occasion.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable when an incident occurs in transportation as prescribed in §§ 171.15 and 171.16 of the HMR. A Hazardous Materials Incident Report, DOT Form F 5800.1, must be completed by the person in physical possession of the hazardous material at the time a hazardous material incident occurs in transportation, such as a release of materials, serious accident, evacuation, or closure of a major transportation artery. Incidents meeting criteria in § 171.15 also require a telephonic report. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

Affected Public: Person in physical possession of a hazardous material at the time an incident occurs in transportation.

Annual Reporting and Recordkeeping:

Number of Respondents: 1,781.

Total Annual Responses: 17,810.

Total Annual Burden Hours: 23,746.

Frequency of collection: On occasion.

Title: Flammable Cryogenic Liquids.

OMB Control Number: 2137–0542.

Summary: Paragraph (h) of § 177.840 specifies certain safety procedures and documentation requirements for drivers of these motor vehicles. Provisions in § 177.840(l) of the HMR require the carriage on a motor vehicle of written procedures for venting flammable cryogenic liquids and for emergency response. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics, which are characterized by extreme flammability and high compression ratio when in a liquid state.

Affected Public: Carriers of cryogenic materials.

Annual Reporting and Recordkeeping:

Total Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency of collection: On occasion.

Title: Testing Requirements for Non-bulk Packaging.

OMB Control Number: 2137–0572.

Summary: Detailed packaging manufacturing specifications have been replaced by a series of performance tests that a non-bulk packaging must be capable of passing before it is authorized to be used for transporting hazardous materials. The HMR require proof that packagings meet these testing requirements. Manufacturers must retain records of design qualification tests and periodic retests. Manufacturers must notify, in writing, persons to whom packagings are transferred of any specification requirements that have not been met at the time of transfer; and the type and dimensions of any closures, including gaskets, needed to satisfy performance test requirements. Subsequent distributors must also provide written notification. Performance-oriented packaging standards allow manufacturers and shippers much greater flexibility in selecting more economical packagings.

Affected Public: Each non-bulk packaging manufacturer that tests packagings to ensure compliance with the HMR and subsequent distributors.

Annual Reporting and Recordkeeping:

Annual Respondents: 5,000.

Annual Responses: 15,000.

Annual Burden Hours: 30,000.

Frequency of collection: On occasion.

Title: Container Certification Statement.

OMB Control Number: 2137–0582.

Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and ensure consistency with similar requirements in international standards.

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping:

Annual Respondents: 650.

Annual Responses: 890,000 HM containers & 4,400 explosive containers.

Annual Burden Hours: 14,908.

Frequency of collection: On occasion.

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, and reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping:

Annual Respondents: 66.

Annual Responses: 66.

Annual Burden Hours: 4,082.

Frequency of collection: On occasion.

Title: Response Plans for Shipments of Oil.

OMB Control Number: 2137–0591.

Summary: In recent years, several major oil discharges have damaged the marine environment of the United States. Under the authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, RSPA issued regulations in 49 CFR part 130 that require preparation of written spill response plans.

Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping:

Annual Respondents: 8,000.

Annual Responses: 8,000.

Annual Burden Hours: 10,560.

Frequency of collection: On occasion.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

OMB Control Number: 2137–0595.

Summary: These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of DOT specification MC 330, MC 331, and certain nonspecification cargo tank motor vehicles used to transport liquefied compressed gases. These information collection and recordkeeping requirements are intended to ensure certain cargo tank motor vehicles used to transport liquefied compressed gases are operated safely, and to minimize the potential for catastrophic releases during unloading and loading operations. They include: (1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry the operating procedures on each vehicle; (2) inspection, maintenance, marking and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed

and certified by a Registered Inspector. (See sections 180.416(b)(d)(f); 180.405;180.407(h); 177.840(l); and 173.315(n)).

Affected Public: Carriers in liquefied compressed gas service, manufacturers and repairers.

Annual Reporting and Recordkeeping:
Annual Respondents: 6,958.
Annual Responses: 965,596.
Annual Burden Hours: 200,615.
Frequency of collection: On occasion.

Issued in Washington, DC on March 2, 2004.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 04–5100 Filed 3–5–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8612

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8612, Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

DATES: Written comments should be received on or before May 7, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (Larnice.Mack@irs.gov).

SUPPLEMENTARY INFORMATION: *Title:* Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

OMB Number: 1545–1013.

Form Number: Form 8612.

Abstract: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981 of the Internal Revenue Code. The IRS uses the information to verify that the correct amount of tax has been reported.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 9 hours, 45 minutes.

Estimated Total Annual Burden Hours: 196.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 27, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5155 Filed 3–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8328

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap.

DATES: Written comments should be received on or before May 7, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carryforward Election of Unused Private Activity Bond Volume Cap.

OMB Number: 1545–0874.

Form Number: Form 8328.

Abstract: Internal Revenue Code section 4146(f) requires that an annual volume limit be placed on the amount of private activity bonds issued by each State. Code section 146(f)(3) provides that the unused amount of the private activity bonds for specific programs can be carried forward for 3 years depending on the type of project. In order to carry forward the unused amount of the private activity bond, an irrevocable election can be made by the issuing authority. Form 8328 allows the issuer to execute the carryforward election.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 13 hours, 13 minutes.

Estimated Total Annual Burden Hours: 132,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5157 Filed 3–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1363

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1363, Export Exemption Certificate.

DATES: Written comments should be received on or before May 7, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Export Exemption Certificate.

OMB Number: 1545–0685.

Form Number: Form 1363.

Abstract: Internal Revenue Code section 427(b)(2) exempts exported property from the excise tax on transportation of property. Regulation § 49.4271–1(d)(2) authorizes the filing of Form 1363 by the shipper to request tax exemption for a shipment or a series of shipments. The information on the form is used by the IRS to verify shipments of property made tax-free.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 4 hours, 30 minutes.

Estimated Total Annual Burden Hours: 450,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 1, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5158 Filed 3–5–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
March 8, 2004

Part II

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Notice of Republication of SAMHSA's Standard Grant Announcements; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Republication of SAMHSA's Standard Grant Announcements

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of republication of SAMHSA's standard grant announcements.

SUMMARY: This is a republication of the Substance Abuse and Mental Health Services Administration's standard grant announcements for Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service to Science Grants. These announcements were previously published November 21, 2003. The primary purpose of this republication is to revise the criteria used to screen out applications from peer review. Motivated by the need to assure equitable opportunity and a "level playing field" to all applicants, SAMHSA believes the screening criteria common to those announcements will not best serve the public unless revised and republished. This republication makes those criteria more lenient, permitting a greater number of applications to be reviewed. The revisions to the criteria can be found, in their entirety, in: Section IV, Application and Submission Information; and Appendix A, Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications. Additional references to the criteria elsewhere in the text have been changed to be consistent with the revised criteria in Section IV and Appendix A.

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

In addition, this republication includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget.

The aforementioned are the only changes SAMHSA has made to the four standard grant announcements in this republication. This notice is followed by four notices that provide the revised and final text for SAMHSA's four standard announcements.

DATES: Use of the standard grant announcements will be effective March 8, 2004. The standard grant announcements must be used in conjunction with separate Notices of Funding Availability (NOFAs) that will provide application due dates and other key dates for specific SAMHSA grant funding opportunities.

ADDRESSES: Questions about SAMHSA's standard grant announcements may be directed to Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland 20857. Fax: (301–594–6159). E-mail: *cfriedma@samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.* Phone: (301) 443–6092.

SUPPLEMENTARY INFORMATION: Starting in FY 2004, SAMHSA is changing its approach to announcing and soliciting applications for its discretionary grants. SAMHSA will publish four standard grant announcements that will describe the general program design and provide application instructions for four types of grants—Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants. These standard grant announcements will be posted on SAMHSA's web page and will be available from SAMHSA's clearinghouses on an ongoing basis. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, HIV/AIDS and Substance Abuse Prevention Planning Grants, etc.).

The Notices of Funding Availability (NOFAs) announcing the availability of funds for specific grant funding opportunities will be published separately in the **Federal Register**, and posted on the Federal grants Web site (*http://www.grants.gov*) and on the SAMHSA Web site (*http://www.samhsa.gov*). The NOFAs will:

- Identify any specific target population or issue for the specific grant funding opportunity,
- Identify which of the four standard announcements applicants must use to prepare their applications,
- Specify total funding available for the first year of the grants and the expected size and number of awards,
- Specify the application deadline,
- Note any specific program requirements for each funding opportunity, and
- Include any limitations or exceptions to the general provisions in the standard announcement.

Applicants will need to have both the NOFA and the appropriate standard announcement to prepare their applications. Both documents will be provided, along with application materials, in the application kits available from SAMHSA's clearinghouses as well as on SAMHSA's Web site. SAMHSA's clearinghouse for the Center for Mental Health Services (CMHS) is the National Mental Health Information Center, which can be reached at 1–800–789–2647. The clearinghouse for the Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP) is the National Clearinghouse for Alcohol and Drug Information (NCADI), which can be reached at 1–800–729–6686.

SAMHSA anticipates that the four standard grant announcements will be used for the majority of its grant funding opportunities. However, there will be some funding opportunities that do not fit the standard announcements. In those instances, separate stand-alone grant announcements will be published and provided to applicants as they have been in the past (*i.e.*, in the **Federal Register**, on the SAMHSA Web site, on the Federal grants Web site, and through SAMHSA's clearinghouses).

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–4690 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Republication of Standard Services Grants Announcement

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of republication of standard services grants announcement.

SUMMARY: On November 21, 2003, the Substance Abuse and Mental Health Services Administration published standard grant announcements for Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service to

Science Grants. The primary purpose of this republication is to revise the criteria used to screen out applications from peer review. Motivated by the need to assure equitable opportunity and a "level playing field" to all applicants, SAMHSA believes the screening criteria in these announcements will not best serve the public unless revised and republished. This is a republication of the Services Grants announcement. This republication makes those criteria more lenient, permitting a greater number of applications to be reviewed. The revisions to the criteria can be found, in their entirety, in: Section IV, Application and Submission Information; and Appendix A, Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications. Additional references to the criteria elsewhere in the text have been changed to be consistent with the revised criteria in Section IV and Appendix A.

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

In addition, this republication includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget.

This notice provides the republished text for SAMHSA's standard Services Grants announcement.

DATES: Use of the republished standard Services Grants announcement will be effective March 8, 2004. The standard Services Grants announcement must be used in conjunction with *separate* Notices of Funding Availability (NOFAs) that will provide application due dates and other key dates for specific SAMHSA grant funding opportunities.

ADDRESSES: Questions about SAMHSA's standard Services Grants announcement may be directed to Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov*.

FOR FURTHER INFORMATION CONTACT: Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov*. Phone: (301) 443–6902.

SUPPLEMENTARY INFORMATION: SAMHSA is republishing its standard Services Grants announcement to make the criteria used to screen out applications from peer review more lenient, permitting a greater number of applications to be reviewed. This republication also includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget. The text for the republished standard Services Grants announcement is provided below.

The standard Services Grants announcement will be posted on SAMHSA's web page (*http://www.samhsa.gov*) and will be available from SAMHSA's clearinghouses on an ongoing basis. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, HIV/AIDS and Substance Abuse Prevention Planning Grants, etc.).

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Services Grants—SVC 04 PA (MOD)

(Modified Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*)

Key Dates

Application Deadline—This Program Announcement provides general instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *http://www.grants.gov*.

Intergovernmental Review (E.O. 12372)—Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.

Public Health System Impact Statement (PHSIS)/Single State Agency Coordination—Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than 60 days after application deadline.

Table of Contents

I. Funding Opportunity Description

1. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Services Grants. These grants will expand and strengthen effective, culturally appropriate substance abuse and mental health services at the State and local levels. The services implemented through SAMHSA's Services Grants must incorporate the best objective information available regarding effectiveness and acceptability. In general, the services implemented through SAMHSA's Services Grants will have strong evidence of effectiveness. However, because the evidence base is limited in some areas, SAMHSA may fund some services for which the evidence base, while limited, is sound. SAMHSA expects that the services funded through these grants will be sustained by the grantee beyond the term of the grant.

SAMHSA also funds grants under three other standard grant announcements:

• *Infrastructure Grants* support identification and implementation of systems changes but are not designed to fund services.

• *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.

• *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

This announcement describes the general program design and provides application instructions for all SAMHSA Services Grants. The availability of funds for specific Services Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *http://www.grants.gov*—the Federal grant announcement web page.

SAMHSA's Services Grants are authorized under Section 509, 516 and/or 520A of the Public Health Service Act, unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*.

Typically, funding for Services Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

• Specify total funding available for the first year of the grants and the expected size and number of awards;

• Provide the application deadline;

• Note any specific program requirements for each funding opportunity; and

• Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

2. Expectations

The Services Grant program is designed to address gaps in substance abuse and mental health services and/or to increase the ability of States, units of local government, Indian tribes, tribal organizations and governments, and community- and faith-based organizations to help specific populations or geographic areas with serious, emerging mental health and substance abuse problems. SAMHSA intends that its Services Grants result in the delivery of services as soon as possible and *no later than 4 months* after award. SAMHSA's Services Grants may include substance abuse prevention, substance abuse treatment and/or mental health services. Throughout this announcement, SAMHSA will use the term "services" to refer to all three types of services. The NOFA will provide guidance on the particular type of service to be provided through each funding opportunity.

2.1 Documenting the Evidence-Base for Services To Be Implemented

The services implemented through SAMHSA's Services Grants must incorporate the best objective information available regarding the effectiveness and acceptability of the services to be implemented. In general, the services implemented through SAMHSA's Services Grants will have strong evidence of effectiveness. However, because the evidence base is limited in some areas, SAMHSA may fund some services for which the evidence of effectiveness is based on formal consensus among recognized experts in the field and/or evaluation studies that have not been published in the peer reviewed literature.

Applicants must document in their applications that the services/practices they propose to implement are evidence-based services/practices. In addition, applicants must justify use of the proposed services/practices for the target population along with any adaptations or modifications necessary to meet the unique needs of the target population or otherwise increase the likelihood of achieving positive outcomes. Further guidance on each of these requirements is provided below.

Documenting the Evidence-Based Practice/Service

SAMHSA has already determined that certain services/practices are solidly evidence-based services/practices and encourages applicants to select services/practices from following sources (though this is not required):

• SAMHSA's National Registry of Effective Programs (NREP) (see Appendix C)

• Center for Mental Health Services (CMHS) Evidence Based Practice Tool Kits (see Appendix D)

• List of Effective Substance Abuse Treatment Practices (see Appendix E)

• Additional practices identified in the NOFA for a specific funding opportunity, if applicable

Applicants proposing services/practices that are not included in the above-referenced sources must provide a narrative justification that summarizes the evidence for effectiveness and acceptability of the proposed service/practice. The preferred evidence of effectiveness and acceptability will include the findings from clinical trials, efficacy and/or effectiveness studies published in the peer-reviewed literature.

In areas where little or no research has been published in the peer-reviewed scientific literature, the applicant may present evidence involving studies that have not been published in the peer-reviewed research literature and/or documents describing formal consensus among recognized experts. If consensus documents are presented, they must describe consensus among multiple experts whose work is recognized and respected by others in the field. Local recognition of an individual as a respected or influential person at the community level is not considered a "recognized expert" for this purpose.

In presenting evidence in support of the proposed service/practice, applicants must show that the evidence presented is the best objective information available.

Justifying Selection of the Service/Practice for the Target Population

Regardless of the strength of the evidence-base for the service/practice, all applicants must show that the proposed service/practice is appropriate for the proposed target population. Ideally, this evidence will include research findings on effectiveness and acceptability specific to the proposed target population. However, if such evidence is not available, the applicant should provide a justification for using the proposed service/practice with the target population. This justification might involve, for example, a description of adaptations to the proposed service/practice based on other research involving the target population.

Justifying Adaptations/Modifications of the Proposed Service/Practice

SAMHSA has found that a high degree of faithfulness or "fidelity" (see Glossary) to the original model for an evidence-based service/practice increases the likelihood that positive outcomes will be achieved when the model is used by others. Therefore, SAMHSA encourages fidelity to the original evidence-based service/practice to be implemented. However, SAMHSA recognizes that adaptations or modifications to the original model may be necessary for a variety of reasons:

• To allow implementers to use resources efficiently

• To adjust for specific needs of the client population

• To address unique characteristics of the local community where the service/practice will be implemented

All applicants must describe and justify any adaptations or modifications to the proposed service/practice that will be made.

2.2 Services Delivery

SAMHSA's Services Grant funds must be used primarily to support direct services, including the following types of activities:

• Conducting outreach *and* pre-service strategies to expand access to treatment or prevention services to underserved populations. If you propose to provide *only* outreach and pre-service strategies, you must show that your organization is an effective and integral part of a network of service providers.

• Purchasing or providing direct treatment (including screening, assessment, and care management) or prevention services for populations at risk. Treatment must be provided in outpatient, day treatment or intensive outpatient, or residential programs.

• Purchasing or providing "wrap-around" services (see Glossary) (*e.g.*, child care, vocational, educational and transportation services) designed to improve access and retention.

• Collecting data using specified tools and standards to measure and monitor treatment or prevention services and costs. (No more than 20% of the total grant award may be used for data collection and evaluation.)

2.3 Infrastructure Development (Maximum 15% of Total Grant Award)

Although SAMHSA expects that its Services Grant funds will be used primarily for direct services, SAMHSA recognizes that infrastructure changes may be needed to support service delivery expansion in some instances. You may use up to 15% of the total Services Grant award for the following types of infrastructure development, if necessary to support the direct service expansion of the grant project.

• Building partnerships to ensure the success of the project and entering into service delivery and other agreements.

• Developing or changing the infrastructure to expand treatment or prevention services.

• Training to assist treatment or prevention providers and community support systems to identify and address mental health or substance abuse issues.

2.4 Data and Performance Measurement

The Government Performance and Results Act of 1993 (P.L.103–62, or "GPRA") requires all Federal agencies to set program performance targets and report annually on the degree to which the previous year's targets were met.

Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding.

To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis.

Specifically, grantees will be required to provide data on a set of required measures, as specified in the NOFA. The data collection tools to be used for reporting the required data will be provided in the application kits distributed by SAMHSA's clearinghouses and posted on SAMHSA's Web site along with each NOFA. In your application, you must demonstrate your ability to collect and report on these measures, and you may be required to provide some baseline data.

The terms and conditions of the grant award also will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

Applicants should be aware that SAMHSA is working to develop a set of required core performance measures for each of SAMHSA's standard grants (*i.e.*, Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). As this effort proceeds, some of the data collection and reporting requirements included in SAMHSA's NOFAs may change. All grantees will be expected to comply with any changes in data collection requirements that occur during the grantee's project period.

2.5 Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

2.6 Evaluation

Grantees must evaluate their projects, and you are required to describe your evaluation plans in your application. The evaluation should be designed to provide regular feedback to the project to improve services. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

• How closely did implementation match the plan?

• What types of deviation from the plan occurred?

• What led to the deviations?

• What effect did the deviations have on the planned intervention and evaluation?

• Who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

• What was the effect of treatment on participants?

• What program/contextual factors were associated with outcomes?

• What individual factors were associated with outcomes?

• How durable were the effects?

No more than 20% of the total grant award may be used for evaluation and data collection, including GPRA.

II. Award Information

1. Award Amount

The expected award amount for each funding opportunity will be specified in the NOFA. Typically, SAMHSA's Services Grant awards are expected to be about $500,000 per year in total costs (direct and indirect) for up to 5 years. Awards may range as high as $3.0 million per year in total costs (direct and indirect) for up to 5 years. Regardless of the award amount specified in the NOFA, the actual award amount will depend on the availability of funds.

Proposed budgets cannot exceed the allowable amount specified in the NOFA in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

2. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative

agreements (see the Glossary in Appendix B for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic public and private nonprofit entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program prohibits grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

2. Cost Sharing

Cost sharing (see Glossary) is not required in this program, and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind contributions (see Glossary) in your proposal as evidence of commitment to the proposed project.

3. Other

3.1 Additional Eligibility Requirements

Applications must comply with the following requirements, or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document. Applicants should be aware that the NOFA may include additional requirements that, if not met, will result in applications being screened out and returned without review. These requirements will be specified in Section III–3 of the NOFA.

You also must comply with any additional program requirements specified in the NOFA, such as signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

3.2 Evidence of Experience and Credentials

SAMHSA believes that only existing, experienced, and appropriately credentialed organizations with demonstrated infrastructure and expertise will be able to provide required services quickly and effectively. Therefore, in addition to the basic eligibility requirements specified in this announcement, applicants must meet three additional requirements related to the provision of treatment or prevention services.

The three requirements are:

- A provider organization for direct client services (*e.g.*, substance abuse treatment, substance abuse prevention, mental health services) appropriate to the grant must be involved in each application. The provider may be the applicant or another organization committed to the project. More than one provider organization may be involved;
- Each direct service provider organization must have at least 2 years experience providing services in the geographic area(s) covered by the application, as of the due date of the application; and
- Each direct service provider organization must comply with all applicable local (city, county) and State/tribal licensing, accreditation, and certification requirements, as of the due date of the application.

[**Note:** The above requirements apply to all service provider organizations. A license from an individual clinician will not be accepted in lieu of a provider organization's license.]

In Appendix 1 of the application, you must: (1) Identify at least one experienced, licensed service provider organization; (2) include a list of all direct service provider organizations that have agreed to participate in the proposed project, including the applicant agency if the applicant is a treatment or prevention service provider organization; and (3) include the Statement of Assurance (provided in Appendix F of this announcement), signed by the authorized representative of the applicant organization identified on the face-page of the application, that all participating service provider organizations:

- Meet the 2-year experience requirement,
- Meet applicable licensing, accreditation, and certification requirements, and
- If the application is within the funding range, will provide the Government Project Officer (GPO) with the required documentation within the time specified.

If Appendix 1 of the application does not contain items (1)–(3), the application will be considered ineligible and will not be reviewed.

In addition, if, following application review, an application's score is within the fundable range for a grant award, the GPO will call the applicant and request that the following documentation be sent by overnight mail:

- A letter of commitment that specifies the nature of the participation and what service(s) will be provided from every service provider organization that has agreed to participate in the project;
- Official documentation that all participating organizations have been providing relevant services for a minimum of 2 years before the date of the application in the area(s) in which the services are to be provided; and
- Official documentation that all participating service provider organizations comply with all applicable local (city, county) and State/tribal requirements for licensing, accreditation, and certification or official documentation from the appropriate agency of the applicable State/tribal, county, or other governmental unit that licensing, accreditation, and certification requirements do not exist.

If the GPO does not receive this documentation within the time specified, the application will be removed from consideration for an award and the funds will be provided to another applicant meeting these requirements.

IV. Application and Submission Information

To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.

1. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.
- For mental health grants, call the National Mental Health Information Center at 1–800–789-CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

• PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. Use the PHS 5161–1, unless otherwise specified in the NOFA. Applications that are not submitted on the required application form will be screened out and will not be reviewed.

• Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.

• Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register**, as well as on the Federal grants Web site (*http://www.grants.gov*).

You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

—*Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

—*Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

—*Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

—*Budget Form*—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.

—*Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through E. Sections A–E together may not be longer than 30 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections F through I. There are no page limits for these sections, except for Section H, the Biographical Sketches/Job Descriptions.

• *Section F*—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• *Section G*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 15% of the total grant award will be used for infrastructure development and that no more than 20% of the total grant award will be used for data collection and evaluation, including GPRA.

• *Section H*—Biographical Sketches and Job Descriptions.

• Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

• Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

• Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• Section I—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

—*Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1, 3, and 4. There are no page limitations for Appendices 2 and 5. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

• *Appendix 1:* Letters of commitment/support. Identification of at least one experienced, licensed service provider organization. A list of all direct service provider organizations that have agreed to participate in the proposed project, including the applicant agency, if it is a treatment or prevention service provider organization. The Statement of Assurance (provided in Appendix F of this announcement) signed by the authorized representative of the applicant organization identified on the face page of the application, that assures SAMHSA that all listed providers meet the 2-year experience requirement, are appropriately licensed, accredited, and certified, and that if the application is within the funding range for an award, the applicant will send the GPO the required documentation within the specified time.

• *Appendix 2:* Data Collection Instruments/Interview Protocols

• *Appendix 3:* Sample Consent Forms

• *Appendix 4:* Letter to the SSA (if applicable; see Section IV–4 of this document)

• *Appendix 5:* A copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State-or county-identified priority.

—*Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. Some applicants will be required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations Form SMA 170. If this assurance applies to a specific funding opportunity, it will be posted on SAMHSA's Web site with the NOFA and provided in the application kits available at SAMHSA's clearinghouse (NCADI).

—*Certifications*—Use the "Certifications" forms found in PHS 5161–1.

—*Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for

publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

—*Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 30-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 30. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The 30-page limit for Appendices 1, 3 and 4 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

Applicants must describe procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section I of the application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of the application may result in the delay of funding.

Confidentiality and Participant Protection

All applicants *must* describe how they will address requirements for each of the following elements relating to confidentiality and participant protection.

1. *Protect Clients and Staff from Potential Risks*

• Identify and describe any foreseeable physical, medical, psychological, social and legal risks or potential adverse effects as a result of the project itself or any data collection activity.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide guidance and assistance in the event there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. *Fair Selection of Participants*

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. *Absence of Coercion*

• Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.

• If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, etc.).

• State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. *Data Collection*

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the

material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. *Privacy and Confidentiality:*

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. *Adequate Consent Procedures:*

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

• Whether or not their participation is voluntary.

• Their right to leave the project at any time without problems.

• Possible risks from participation in the project.

• Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain *written* informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 3, "Sample Consent Forms", of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. *Risk/Benefit Discussion:*

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Depending on the evaluation and data collection requirements of the particular funding opportunity for which you are applying or the evaluation design you propose in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR 46). The NOFA will indicate whether all applicants for a particular funding opportunity must comply with the Protection of Human Subject Regulations.

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and the IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301/496–7005).

3. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be published in the NOFAs in the **Federal Register** and posted on the Federal grants Web site (*http://www.grants.gov*).

Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html.*

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

—For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

—The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance

Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857, Attn: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

In addition, community-based, non-governmental service providers who are not transmitting their applications through the State must submit a Public Health System Impact Statement (PHSIS) (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of appropriate State or local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. *State and local governments and Indian tribal government applicants are not subject to these requirements.*

The PHSIS consists of the following information:

- A copy of the face page of the application (SF 424); and
- A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *http://www.samhsa.gov.* If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Attn: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, Attn: PRA (0920–0428).]

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, SAMHSA Services Grant recipients must comply with the following funding restrictions:

- No more than 15% of the total grant award may be used for developing the infrastructure necessary for expansion of services.
- No more than 20% of the total grant award may be used for evaluation and data collection, including GPRA.

Service Grant funds must be used for purposes supported by the program and may not be used to:

- Pay for any lease beyond the project period.
- Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
- Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request up to $75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
- Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
- Pay for housing other than residential mental health and/or substance abuse treatment.
- Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
- Pay for incentives to induce individuals to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, child care, and vouchers) to individuals as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
- Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.
- Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STD)/sexually transmitted illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the quality of your response to the requirements listed below for developing the Project Narrative (Sections A–E). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these

instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.

• The Project Narrative (Sections A–E) together may be no longer than 30 pages.

• You must use the five sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section of the Project Narrative.

• Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA Web site at *http://www.samhsa.gov.* Click on "Grant Opportunities."

• The Supporting Documentation you provide in Sections F–I and Appendices 1–5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.

• The number of points after each heading is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within the criterion.

Section A: Statement of Need (10 points)

• Describe the target population (see Glossary) as well as the geographic area to be served, and justify the selection of both. Include the numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering programs to this population.

• Describe the nature of the problem and extent of the need for the target population based on data. The statement of need should include a clearly established baseline for the project. Documentation of need may come from a variety of qualitative and quantitative sources. The quantitative data could come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.

• Non-tribal applicants must show that identified needs are consistent with priorities of the State or county that has primary responsibility for the service delivery system. Include, in Appendix 5, a copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State- or county-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.

• Check the NOFA for any additional requirements.

Section B: Proposed Evidence-Based Service/Practice (30 points)

• Clearly state the purpose, goals and objectives of your proposed project. Describe how achievement of goals will produce meaningful and relevant results (*e.g.*, increase access, availability, prevention, outreach, pre-services, treatment, and/or intervention).

• Identify the evidenced based service/practice that you propose to implement. Describe the evidence-base for the proposed service/practice and show that it incorporates the best objective information available regarding effectiveness and acceptability. Follow the instructions provided in #1, #2 or #3 below, as appropriate:

1. *If you are proposing to implement a service/practice included in NREP (see Appendix C), one of the CMHS tool-kits on evidence-based practices (see Appendix D), the list of Effective Substance Abuse Treatment Practices (see Appendix E), or the NOFA (if applicable),* simply identify the practice and state the source from which it was selected. You do not need to provide further evidence of effectiveness.

2. *If you are providing evidence that includes scientific studies published in the peer-reviewed literature or other studies that have not been published, describe the extent to which:*

—The service/practice has been evaluated and the quality of the evaluation studies (*e.g.*, whether they are descriptive, quasi-experimental studies, or experimental studies)

—The services/practice has demonstrated positive outcomes and for what populations the positive outcomes have been demonstrated

—The service/practice has been documented (*e.g.*, through development of guidelines, tool kits, treatment protocols, and/or manuals) and replicated

—Fidelity measures have been developed (*e.g.*, no measures developed, key components identified, or fidelity measures developed)

3. *If you are providing evidence based on a formal consensus process involving recognized experts in the field, describe:*

—The experts involved in developing consensus on the proposed service/practice (*e.g.*, members of an expert panel formally convened by SAMHSA, NIH, the Institute of Medicine or other nationally recognized organization). The consensus must have been developed by a group of experts whose work is recognized and respected by others in the field. Local recognition of an individual as a respected or influential person at the community level is not considered a "recognized expert" for this purpose.

—The nature of the consensus that has been reached and the process used to reach consensus

—The extent to which the consensus has been documented (*e.g.*, in a consensus panel report, meeting minutes, or an accepted standard practice in the field)

—Any empirical evidence (whether formally published or not) supporting the effectiveness of the proposed service/practice

—The rationale for concluding that further empirical evidence does not exist to support the effectiveness of the proposed service/practice

• Justify the use of the proposed service/practice for the target population. Describe and justify any adaptations necessary to meet the needs of the target population as well as evidence that such adaptations will be effective for the target population.

• Identify and justify any additional adaptations or modifications to the proposed service/practice.

• Describe how the proposed project will address issues of age, race, ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population, while retaining fidelity to the chosen practice.

• Demonstrate how the proposed service/practice will meet your goals and objectives. Provide a logic model (see Glossary) that links need, the services or practice to be implemented, and outcomes.

• Check the NOFA for any additional requirements.

Section C: Proposed Implementation Approach (25 points)

• Describe how the proposed service or practice will be implemented.

Provide a realistic time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The time line should be part of the Project Narrative. It should not be placed in an appendix.]

- Clearly state the unduplicated number of individuals you propose to serve (annually and over the entire project period) with grant funds, including the types and numbers of services to be provided and anticipated outcomes. Describe how the target population will be identified, recruited, and retained.
- Describe how members of the target population helped prepare the application, and how they will help plan, implement, and evaluate the project.
- Describe how the project components will be embedded within the existing service delivery system, including other SAMHSA-funded projects, if applicable. Identify any other organizations that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include letters of commitment from community organizations supporting the project in Appendix 1. Identify any cash or in-kind contributions that will be made to the project by the applicant or other partnering organizations.
- Show that the necessary groundwork (*e.g.*, planning, consensus development, development of memoranda of agreement, identification of potential facilities) has been completed or is near completion so that the project can be implemented and service delivery can begin as soon as possible and no later than 4 months after grant award.
- Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.
- Provide a plan to secure resources to sustain the proposed project when Federal funding ends.
- Check the NOFA for any additional requirements.

Section D: Staff and Organizational Experience (20 points)

- Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.
- Provide a list of staff who will participate in the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, such as the evaluator and treatment/prevention personnel.
- Describe the racial/ethnic characteristics of key staff and indicate if any are members of the target population/community. If the target population is multi-linguistic, indicate if the staffing pattern includes bilingual and bicultural individuals.
- Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.
- Check the NOFA for any additional requirements.

Section E: Evaluation and Data (15 points)

- Document your ability to collect and report on the required performance measures as specified in the NOFA. Specify and justify any additional measures you plan to use for your grant project.
- Describe plans for data collection, management, analysis, interpretation and reporting. Describe the existing approach to the collection of data, along with any necessary modifications. Be sure to include data collection instruments/interview protocols in Appendix 2.
- Discuss the reliability and validity of evaluation methods and instrument(s) in terms of the gender/age/culture of the target population.
- Describe the process and outcome evaluation, including assessments of implementation and individual outcomes. Show how the evaluation will be integrated with requirements for collection and reporting of performance data, including data required by SAMHSA to meet GPRA requirements.
- Describe how the evaluation will be used to ensure the fidelity to the practice.
- Provide a per-person or unit cost of the project to be implemented, based on the applicant's actual costs and projected costs over the life of the project.
- Check the NOFA for any additional requirements.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

- The strengths and weaknesses of the application as identified by peer reviewers and, when applicable, approved by the appropriate National Advisory Council;
- Availability of funds;
- Equitable distribution of awards in terms of geography (including urban, rural and remote settings) and balance among target populations and program size; and
- After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points (Proposed Evidence-Based Service/Practice—30 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

- You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and

conditions are available on the SAMHSA Web site at *http://www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

• Actions required to be in compliance with human subjects requirements;

• Requirements relating to additional data collection and reporting;

• Requirements relating to participation in a cross-site evaluation; or

• Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that treatment or prevention services can be sustained, your financial reports should explain plans to ensure the sustainability (see Glossary) of efforts initiated under this grant. Initial plans for sustainability should be described in year 01. In each subsequent year, you should describe the status of your project, as well as the successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act (GPRA)

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. These requirements will be specified in the NOFA for each funding opportunity.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded grant project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

—Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact:

Gwendolyn Simpson (CMHS), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857, (301) 443–4456; *gsimpson@samhsa.gov.*

Edna Frazier (CSAP), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–6816, *efrazier@samhsa.gov.*

Kathleen Sample (CSAT), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–9667, *ksample@samhsa.gov.*

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific NOFA and in Section III of the standard grant announcement. Please check the entire NOFA and Section III of the standard grant announcement before preparing your application.

—Use the PHS 5161–1 application.

—Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and

adhering to the page limit for the Project Narrative stated in the specific funding announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

—The 10 application components required for SAMHSA applications should be included. These are:

• Face Page (Standard Form 424, which is in PHS 5161–1).

• Abstract.

• Table of Contents.

• Budget Form (Standard Form 424A, which is in PHS 5161–1).

• Project Narrative and Supporting Documentation.

• Appendices.

• Assurances (Standard Form 424B, which is in PHS 5161–1).

• Certifications (a form in PHS 5161–1).

• Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1).

• Checklist (a form in PHS 5161–1).

—Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the FY 2004 standard funding announcements.

• Budgetary limitations as specified in Section I, II, and IV–5 of the FY 2004 standard funding announcements.

• Documentation of nonprofit status as required in the PHS 5161–1.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost Sharing or Matching: Cost sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost sharing or matching is not required, and applications will not be screened out on the basis of cost sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Logic Model: A logic model is a diagrammatic representation of a theoretical framework. A logic model describes the logical linkages among program resources, conditions, strategies, short-term outcomes, and long-term impact. More information on how to develop logics models and examples can be found through the resources listed in Appendix G.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—National Registry of Effective Programs

To help SAMHSA's constituents learn more about science-based programs, SAMHSA's Center for Substance Abuse Prevention (CSAP) created a National Registry of Effective Programs (NREP) to review and identify effective programs. NREP seeks candidates from the practice community and the scientific literature. While the initial focus of NREP was substance abuse prevention programming, NREP has expanded its scope and now

includes prevention and treatment of substance abuse and of co-occurring substance abuse and mental disorders, and psychopharmacological programs and workplace programs.

NREP includes three categories of programs: Effective Programs, Promising Programs, and Model Programs. Programs defined as Effective have the option of becoming Model Programs if their developers choose to take part in SAMHSA dissemination efforts. The conditions for making that choice, together with definitions of the three major criteria, are as follows.

Promising Programs have been implemented and evaluated sufficiently and are scientifically defensible. They have positive outcomes in preventing substance abuse and related behaviors. However, they have not yet been shown to have sufficient rigor and/or consistently positive outcomes required for Effective Program status. Nonetheless, Promising Programs are eligible to be elevated to Effective/Model status after review of additional documentation regarding program effectiveness. Originated from a range of settings and spanning target populations, Promising Programs can guide prevention, treatment, and rehabilitation.

Effective Programs are well-implemented, well-evaluated programs that produce consistently positive pattern of results (across domains and/or replications). Developers of Effective Programs have yet to help SAMHSA/CSAP disseminate their programs, but may do so themselves.

Model Programs are also well-implemented, well-evaluated programs, meaning they have been reviewed by NREP according to rigorous standards of research. Their developers have agreed with SAMHSA to provide materials, training, and technical assistance for nationwide implementation. That helps ensure the program is carefully implemented and likely to succeed.

Programs that have met the NREP standards for each category can be identified by accessing the NREP Model Programs Web site at *http://www.modelprograms.samhsa.gov.*

Appendix D—Center for Mental Health Services Evidence-Based Practice Toolkits

SAMHSA's Center for Mental Health Services and the Robert Wood Johnson Foundation initiated the Evidence-Based Practices Project to: (1) Help more consumers and families access services that are effective, (2) help providers of mental health services develop effective services, and (3) help administrators support and maintain these services. The project is now also funded and endorsed by numerous national, State, local, private and public organizations, including the Johnson & Johnson Charitable Trust, the MacArthur Foundation, and the West Family Foundation.

The project has been developed through the cooperation of many Federal and State mental health organizations, advocacy groups, mental health providers, researchers, consumers and family members. A Web site (*http://www.mentalhealthpractices.org*) was created as part of Phase I of the project, which included the identification of the first cluster of evidence-based practices and the design of implementation resource kits to help people understand and use these practices successfully.

Basic information about the first six evidence-based practices is available on the Web site. The six practices are:

1. Illness Management and Recovery
2. Family Psychoeducation
3. Medication Management Approaches in Psychiatry
4. Assertive Community Treatment
5. Supported Employment
6. Integrated Dual Disorders Treatment

Each of the resource kits contains information and materials written by and for the following groups:

— Consumers
— Families and Other Supporters
— Practitioners and Clinical Supervisors
— Mental Health Program Leaders
— Public Mental Health Authorities

Material on the Web site can be printed or downloaded with Acrobat Reader, and references are provided where additional information can be obtained.

Once published, the full kits will be available from National Mental Health Information Center at *http://www.health.org* or 1–800–789–CMHS (2647).

Appendix E—Effective Substance Abuse Treatment Practices

To assist potential applicants, SAMHSA's Center for Substance Abuse Treatment (CSAT) has identified the following listing of current publications on effective treatment practices for use by treatment professionals in treating individuals with substance abuse disorders. These publications are available from the National Clearinghouse for Alcohol and Drug Information (NCADI); Tele: 1–800–729–6686 or *http://www.health.org* and *http://www.samhsa.gov/centers/csat2002/publications.html.*

CSAT Treatment Improvement Protocols (TIPs) are consensus-based guidelines developed by clinical, research, and administrative experts in the field.

- *Integrating Substance Abuse Treatment and Vocational Services.* TIP 38 (2000) NCADI # BKD381
- *Substance Abuse Treatment for Persons with Child Abuse and Neglect Issues.* TIP 36 (2000) NCADI # BKD343
- *Substance Abuse Treatment for Persons with HIV/AIDS.* TIP 37 (2000) NCADI # BKD359
- *Brief Interventions and Brief Therapies for Substance Abuse.* TIP 34 (1999) NCADI # BKD341
- *Enhancing Motivation for Change in Substance Abuse Treatment.* TIP 35 (1999) NCADI # BKD342
- Screening and Assessing Adolescents for Substance Use Disorders. TIP 31 (1999) NCADI # BKD306
- Treatment for Stimulant Use Disorders. TIP 33 (1999) NCADI # BKD289
- Treatment of Adolescents with Substance Use Disorders. TIP 32 (1999) NCADI # BKD307
- Comprehensive Case Management for Substance Abuse Treatment. TIP 27 (1998) NCADI # BKD251
- Continuity of Offender Treatment for Substance Use Disorders From Institution to Community. TIP 30 (1998) NCADI # BKD304
- Naltrexone and Alcoholism Treatment. TIP 28 (1998) NCADI # BKD268
- Substance Abuse Among Older Adults. TIP 26 (1998) NCADI # BKD250
- Substance Use Disorder Treatment for People With Physical and Cognitive Disabilities. TIP 29 (1998) NCADI # BKD288
- A Guide to Substance Abuse Services for Primary Care Clinicians. TIP 24 (1997) NCADI # BKD234
- Substance Abuse Treatment and Domestic Violence. TIP 25 (1997) NCADI # BKD239
- Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing. TIP 23 (1996) NCADI # BKD205
- Alcohol and Other Drug Screening of Hospitalized Trauma Patients. TIP 16 (1995) NCADI # BKD164
- Combining Alcohol and Other Drug Abuse Treatment With Diversion for Juveniles in the Justice System. TIP 21 (1995) NCADI # BKD169
- Detoxification From Alcohol and Other Drugs. TIP 19 (1995) NCADI # BKD172
- LAAM in the Treatment of Opiate Addiction. TIP 22 (1995) NCADI # BKD170
- Matching Treatment to Patient Needs in Opioid Substitution Therapy. TIP 20 (1995) NCADI # BKD168
- Planning for Alcohol and Other Drug Abuse Treatment for Adults in the Criminal Justice System. TIP 17 (1995) NCADI # BKD165
- Assessment and Treatment of Cocaine-Abusing Methadone-Maintained Patients. TIP 10 (1994) NCADI # BKD157
- Assessment and Treatment of Patients With Coexisting Mental Illness and Alcohol and Other Drug Abuse. TIP 9 (1994) NCADI # BKD134
- Intensive Outpatient Treatment for Alcohol and Other Drug Abuse. TIP 8 (1994) NCADI # BKD139

Other Effective Practice Publications

CSAT Publications—

- Anger Management for Substance Abuse and Mental Health Clients: A Cognitive Behavioral Therapy Manual (2002) NCADI # BKD444
- Anger Management for Substance Abuse and Mental Health Clients: Participant Workbook (2002) NCADI # BKD445
- Multidimensional Family Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 5 (2002) NCADI # BKD388
- Navigating the Pathways: Lessons and Promising Practices in Linking Alcohol and Drug Services with Child Welfare. TAP 27 (2002) NCADI # BKD436
- The Motivational Enhancement Therapy and Cognitive Behavioral Therapy Supplement: 7 Sessions of Cognitive Behavioral Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 2 (2002) NCADI # BKD385
- Family Support Network for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 3 (2001) NCADI # BKD386

• Identifying Substance Abuse Among TANF-Eligible Families. TAP 26 (2001) NCADI # BKD410

• Motivational Enhancement Therapy and Cognitive Behavioral Therapy for Adolescent Cannabis Users: 5 Sessions. CYT Cannabis Youth Treatment Series Vol. 1 (2001) NCADI # BKD384

• The Adolescent Community Reinforcement Approach for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 4 (2001) NCADI # BKD387

• Substance Abuse Treatment for Women Offenders: Guide to Promising Practices. TAP 23 (1999) NCADI # BKD310

• Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice. TAP 21 (1998) NCADI # BKD246

• Bringing Excellence to Substance Abuse Services in Rural and Frontier America. TAP 20 (1997) NCADI # BKD220

• Counselor's Manual for Relapse Prevention with Chemically Dependent Criminal Offenders. TAP 19 (1996) NCADI # BKD723

• Draft Buprenorphine Curriculum for Physicians (**Note:** the Curriculum is in DRAFT form and is currently being updated) *http://www.buprenorphine.samhsa.gov*

• CSAT Guidelines for the Accreditation of Opioid Treatment Programs *http://www.samhsa.gov/centers/csat/content/dpt/accreditation.htm*

• Model Policy Guidelines for Opioid Addiction Treatment in the Medical Office *http://www.samhsa.gov/centers/csat/content/dpt/model_policy.htm*

NIDA Manuals—Available Through NCADI

• Brief Strategic Family Therapy. Manual 5 (2003) NCADI # BKD481

• Drug Counseling for Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 4 (2002) NCADI # BKD465

• The NIDA Community-Based Outreach Model: A Manual to Reduce Risk HIV and Other Blood-Borne Infections in Drug Users. (2000) NCADI # BKD366

• An Individual Counseling Approach to Treat Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 3 (1999) NCADI # BKD337

• Cognitive-Behavioral Approach: Treating Cocaine Addiction. Manual 1 (1998) NCADI # BKD254

• Community Reinforcement Plus Vouchers Approach: Treating Cocaine Addiction. Manual 2 (1998) NCADI # BKD255

NIAAA Publications—*These publications are available in PDF format or can be ordered on-line at *http://www.niaaa.nih.gov/publications/guides.htm*. An order form for the Project MATCH series is available on-line at *http://www.niaaa.nih.gov/publications/match.htm*. All publications listed can be ordered through the NIAAA Publications Distribution Center, P.O. Box 10686, Rockville, MD 20849–0686.

• *Alcohol Problems in Intimate Relationships: Identification and Intervention. A Guide for Marriage and Family Therapists (2003) NIH Pub. No. 03–5284

• *Helping Patients with Alcohol Problems: A Health Practitioner's Guide. (2003) NIH Pub. No. 03–3769

• Cognitive-Behavioral Coping Skills Therapy Manual. Project MATCH Series, Vol. 3 (1995) NIH Pub. No. 94–3724

• Motivational Enhancement Therapy Manual. Project MATCH Series, Vol. 2 (1994) NIH Pub. No. 94–3723

Appendix F—Statement of Assurance

As the authorized representative of the applicant organization, I assure SAMHSA that if {insert name of organization} application is within the funding range for a grant award, the organization will provide the SAMHSA Government Project Officer (GPO) with the following documents. I understand that if this documentation is not received by the GPO within the specified timeframe, the application will be removed from consideration for an award and the funds will be provided to another applicant meeting these requirements.

• a letter of commitment that specifies the nature of the participation and what service(s) will be provided from every service provider organization, listed in Appendix 1 of the application, that has agreed to participate in the project;

• official documentation that all service provider organizations participating in the project have been providing relevant services for a minimum of 2 years prior to the date of the application in the area(s) in which services are to be provided. Official documents must definitively establish that the organization has provided relevant services for the last 2 years; and

• official documentation that all participating service provider organizations are in compliance with all local (city, county) and State/tribal requirements for licensing, accreditation, and certification or official documentation from the appropriate agency of the applicable State/tribal, county, or other governmental unit that licensing, accreditation, and certification requirements do not exist. (Official documentation is a copy of each service provider organization's license, accreditation, and certification. Documentation of accreditation will not be accepted in lieu of an organization's license. A statement by, or letter from, the applicant organization or from a provider organization attesting to compliance with licensing, accreditation and certification or that no licensing, accreditation, certification requirements exist *does not* constitute adequate documentation.)

(Signature of Authorized Representative)

(Date)

Appendix G—Logic Model Resources

Chen, W.W., Cato, B.M., & Rainford, N. (1998–9). Using a logic model to plan and evaluate a community intervention program: A case study. International Quarterly of Community Health Education, 18(4), 449–458.

Edwards, E.D., Seaman, J.R., Drews, J., & Edwards, M.E. (1995). A community approach for Native American drug and alcohol prevention programs; A logic model framework. Alcoholism Treatment Quarterly, 13(2), 43–62.

Hernandez, M. & Hodges, S. (2003). Crafting Logic Models for Systems of Care: Ideas into Action. [Making children's mental health services successful series, volume 1]. Tampa, FL: University of South Florida, The Louis de la Parte Florida Mental Health Institute, Department of Child & Family Studies. *http://cfs.fmhi.usf.edu* or phone (813) 974–4651

Hernandez, M. & Hodges, S. (2001). Theory-based accountability. In M. Hernandez & S. Hodges (Eds.), Developing Outcome Strategies in Children's Mental Health, pp. 21–40. Baltimore: Brookes.

Julian, D.A. (1997). Utilization of the logic model as a system level planning and evaluation device. Evaluation and Planning, 20(3), 251–257.

Julian, D.A., Jones, A., & Deyo, D. (1995). Open systems evaluation and the logic model: Program planning and evaluation tools. Evaluation and Program Planning, 18(4), 333–341.

Patton, M.Q. (1997). Utilization-Focused Evaluation (3rd Ed.), pp. 19, 22, 241. Thousand Oaks, CA: Sage.

Wholey, J.S., Hatry, H.P., Newcome, K.E. (Eds.) (1994). Handbook of Practical Program Evaluation. San Francisco, CA: Jossey-Bass Inc.

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–4691 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Republication of Standard Infrastructure Grants Announcement

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of republication of standard infrastructure grants announcement.

SUMMARY: On November 21, 2003, the Substance Abuse and Mental Health Services Administration published standard grant announcements for Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service to Science Grants. The primary purpose of this republication is to revise the criteria used to screen out applications from peer review. Motivated by the need to assure equitable opportunity and a "level playing field" to all applicants, SAMHSA believes the screening criteria in these announcements will not best

serve the public unless revised and republished. This is a republication of the Infrastructure Grants announcement. This republication makes those criteria more lenient, permitting a greater number of applications to be reviewed. The revisions to the criteria can be found, in their entirety, in: Section IV, Application and Submission Information; and Appendix A, Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications. Additional references to the criteria elsewhere in the text have been changed to be consistent with the revised criteria in Section IV and Appendix A.

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

In addition, this republication includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget.

This notice provides the republished text for SAMHSA's standard Infrastructure Grants announcement.

DATES: Use of the republished standard Infrastructure Grants announcement will be effective March 8, 2004. The standard Infrastructure Grants announcement must be used in conjunction with separate Notices of Funding Availability (NOFAs) that will provide application due dates and other key dates for specific SAMHSA grant funding opportunities.

ADDRESSES: Questions about SAMHSA's standard Infrastructure Grants announcement may be directed to Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland, 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland, 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.* Phone: (301) 443–6902.

SUPPLEMENTARY INFORMATION: SAMHSA is republishing its standard Infrastructure Grants announcement to make the criteria used to screen out applications from peer review more lenient, permitting a greater number of applications to be reviewed. This republication also includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget. The text for the republished standard Infrastructure Grants announcement is provided below.

The standard Infrastructure Grants announcement will be posted on SAMHSA's web page (*www.samhsa.gov*) and will be available from SAMHSA's clearinghouses on an ongoing basis. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, HIV/AIDS and Substance Abuse Prevention Planning Grants, etc.).

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Infrastructure Grants—INF 04 PA (MOD) (Modified Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *www.grants.gov*)

Key Dates

Application deadline—This Program Announcement provides general instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *www.grants.gov.*

Intergovernmental review (E.O. 12372)—Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.

Public Health System Impact Statement (PHSIS)/SSA coordination—Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than 60 days after application deadline.

Table of Contents

I. Funding Opportunity Description

1. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Infrastructure Grants. These grants will increase the capacity of mental health and/or substance abuse service systems to support effective programs and services. Applicants who seek Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health services should apply for awards under this announcement.

SAMHSA also funds grants under three other standard grant announcements:

- *Services Grants* provide funding to implement substance abuse and mental health services.
- *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.
- *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

This announcement describes the general program design and provides application instructions for all SAMHSA Infrastructure Grants. The availability of funds for specific Infrastructure Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *www.grants.gov*—the Federal grant announcement web page.

SAMHSA's Infrastructure Grants are authorized under Section 509, 516 and/or 520A of the Public Health Service Act, unless otherwise specified in a NOFA in the **Federal Register** and on *www.grants.gov*.

Typically, funding for Infrastructure Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

2. Expectations

SAMHSA's Infrastructure Grants support an array of activities to help the grantee build a solid foundation for delivering and sustaining effective substance abuse prevention and/or treatment and/or mental health services.

SAMHSA recognizes that each applicant will start from a unique point in developing infrastructure and will serve populations/communities with specific needs. Awardees may pursue diverse strategies and methods to achieve their infrastructure development and capacity expansion goals. Successful applicants will provide a coherent and detailed conceptual "roadmap" of the process by which they have assessed or intend to assess service system needs and plan/implement infrastructure development strategies that meet those needs. The plan put forward in the grant application must show the linkages among needs, the proposed infrastructure development strategy, and increased system capacity that will enhance and sustain effective programs and services.

2.1 Allowable Activities

SAMHSA's Infrastructure Grants will support the following types of activities:

Infrastructure Development

Infrastructure Grant funds must be used primarily to support infrastructure development, including the following types of activities:

- Needs assessment
- Strategic planning
- Financing/coordination of funding streams
- Organizational/structural change (*e.g.*, to create locus of responsibility for a specific issue/population, or to increase access to or efficiency of services)
- Development of interagency coordination mechanisms
- Provider/network development
- Policy development to support needed service system improvements (*e.g.*, rate-setting activities, establishment of standards of care, development/revision of credentialing, licensure, or accreditation requirements)
- Quality improvement efforts
- Performance measurement development
- Workforce development (*e.g.*, training, support for licensure, credentialing, or accreditation)
- Data infrastructure/MIS development

Implementation Pilots (maximum 15 percent of total grant award)

Depending on the scope of the project (see description of award categories below), up to 15 percent of the total grant award may be used for "implementation pilots" to test the effectiveness of the infrastructure changes on services delivery. Funds may not be used to provide direct services except in the context of an implementation pilot.

2.2 Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to set program performance targets and report annually on the degree to which the previous year's targets were met.

Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding.

To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis.

Specifically, grantees will be required to provide data on a set of required measures, as specified in the NOFA. The data collection tools to be used for reporting the required data will be provided in the application kits distributed by SAMHSA's clearinghouses and posted on SAMHSA's Web site along with each NOFA. In your application, you must demonstrate your ability to collect and report on these measures, and you may be required to provide some baseline data.

The terms and conditions of the grant award also will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

Applicants should be aware that SAMHSA is working to develop a set of required core performance measures for each of SAMHSA's standard grants (*i.e.*, Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). As this effort proceeds, some of the data collection and reporting requirements included in SAMHSA's NOFAs may change. All grantees will be expected to comply with any changes in data collection requirements that occur during the grantee's project period.

2.3 Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

2.4 Evaluation

Grantees must evaluate their projects, and applicants are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project to improve services. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

- How closely did implementation match the plan?
- What types of deviation from the plan occurred?
- What led to the deviations?
- What impact did the deviations have on the intervention and evaluation?
- Who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

- What was the effect of infrastructure development on service capacity and other system outcomes?
- What program/contextual factors were associated with outcomes?
- What individual factors were associated with outcomes?
- How durable were the effects?

If the project includes an implementation pilot involving services delivery, the evaluation should include client and system outcomes.

No more than 20% of the total grant award may be used for evaluation and data collection. The evaluation and data collection may be considered "Infrastructure" and/or "Implementation Pilots" expenditures, depending on their purpose.

II. Award Information

1. Award Amount

The NOFA will specify the expected award amount for each funding opportunity. Regardless of the amount specified in the NOFA, the actual award amount will depend on the availability of funds.

Two types of Infrastructure Grants will be made:

Category 1—Small Infrastructure Grants. Category 1 grants will be limited in scope as specified in the NOFA. For example, allowable activities might be limited to workforce development, data infrastructure, or strategic planning. Implementation pilots are not allowed in Category 1 awards. Category 1 awards are expected to be for a period of 1–3 years in amounts ranging from $250,000–$500,000 per year.

Category 2—Comprehensive Infrastructure Grants. The scope of the Category 2 grants will be much larger. While applicants are not required to include all of the allowable activities in their proposed projects, the proposed projects must encompass multiple domains (*e.g.*, needs assessment, strategic and financial planning, organizational/structural change, and network development). Category 2 awards may use a maximum of 15 percent of the total grant award for implementation pilots. Category 2 awards are expected to be for a period of 3–5 years in amounts ranging from $750,000–$3 million per year.

Proposed budgets cannot exceed the allowable amount as specified in the NOFA in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

2. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (see the Glossary in Appendix B for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic public and private nonprofit entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

2. Cost Sharing

Cost sharing (see Glossary) is not required in this program, and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind (see Glossary) contributions in your proposal as evidence of commitment to the proposed project.

3. Other

Applications must comply with the following requirements, or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document. Applicants should be aware that the NOFA may include additional requirements that, if not met, will result in applications being screened out and returned without review. These requirements will be specified in Section III–3 of the NOFA.

You also must comply with any additional requirements specified in the NOFA, such as the required signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.
- For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1 unless otherwise specified in the NOFA. Applications that are not submitted on the required application form will be screened out and will not be reviewed.
- Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.
- Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register**, as well as on the Federal grants Web site (*www.grants.gov*).

You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation,

Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

—Face Page—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

—Abstract—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

—Table of Contents—Include page numbers for each of the major sections of your application and for each appendix.

—Budget Form—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.

—Project Narrative and Supporting Documentation—The Project Narrative describes your project. It consists of Sections A through D. These sections in total may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through H. There are no page limits for these sections, except for Section G, Biographical Sketches/Job Descriptions.

• *Section E*—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• *Section F*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation. If you are proposing a services implementation pilot (allowed only for Category 2 applicants), show that no more than 15% of the total grant award will be used for the pilot.

• *Section G*—Biographical Sketches and Job Descriptions.

• Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

• Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

• Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Section H*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

—Appendices 1 through 5—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1, 3, and 4. There are no page limitations for Appendices 2 and 5. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

• *Appendix 1:* Letters of Support

• *Appendix 2:* Data Collection Instruments/Interview Protocols

• *Appendix 3:* Sample Consent Forms

• *Appendix 4:* Letter to the SSA (if applicable; see Section IV–4 of this document)

• *Appendix 5:* A copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State- or county-identified priority.

—Assurances—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. Some applicants will be required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations Form SMA 170. If this assurance applies to a specific funding opportunity, it will be posted on SAMHSA's Web site with the NOFA and provided in the application kits available at SAMHSA's clearinghouse (NCADI).

—Certifications—Use the "Certifications" forms found in PHS 5161–1.

—Disclosure of Lobbying Activities—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

—Checklist—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page

less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The 30-page limit for Appendices 1, 3, and 4 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

Applicants must describe procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section H of the application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of the application may result in the delay of funding.

Confidentiality and Participant Protection:

All applicants must describe how they will address the requirements for each of the following elements relating to confidentiality and participant protection.

1. Protect Clients and Staff From Potential Risks

• Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide guidance and assistance in the event there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.

• Explain the reasons for including or excluding participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

• Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.

• If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, etc.).

• State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. Data Collection

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of all available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

• Whether or not their participation is voluntary.

• Their right to leave the project at any time without problems.

• Possible risks from participation in the project.

• Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain written informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 3, "Sample Consent Forms," of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations:

Applicants may have to comply with the Protection of Human Subjects Regulations (45 CFR part 46), depending on the evaluation and data collection requirements of the particular funding opportunity for which the applicant is applying or the evaluation design proposed in the application. The NOFA will indicate whether all applicants for a particular funding opportunity must comply with the Protection of Human Subject Regulations.

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be published in the NOFAs in the **Federal Register** and posted on the Federal grants web site (*www.grants.gov*).

Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) web site at *www.whitehouse.gov/omb/grants/spoc.html*.

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

In addition, community-based, non-governmental service providers who are not transmitting their applications through the State must submit a Public Health System Impact Statement (PHSIS) (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of appropriate State or local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to these requirements.

The PHSIS consists of the following information:

• A copy of the face page of the application (SF 424); and

• A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's web site at *www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA must include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days

after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428).]

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, SAMHSA Infrastructure Grant recipients must comply with the following funding restrictions:

- Infrastructure grant funds must be used for purposes supported by the program.
- If requested project funds exceed $750,000, a maximum of 15% of grant award funds may be used for implementation pilots. Direct services may be funded only in the context of an implementation pilot.
- No more than 20% of the grant award may be used for evaluation and data collection expenses. These expenses may be considered infrastructure or implementation pilot expenses, depending on the nature of the evaluation and data collection.
- Infrastructure funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project. Applications may request up to $75,000 for renovations and alterations of existing facilities.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the quality of your response to the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA web site at *www.samhsa.gov*. Click on "Grant Opportunities."
- The Supporting Documentation you provide in Sections E–H and Appendices 1–5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Statement of Need (10 points)

- Describe the target population (see Glossary) and the proposed catchment area (see Glossary), and justify the selection of both. Include the numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering programs to this population.
- Document the need for an enhanced infrastructure to increase the capacity to implement, sustain, and improve effective substance abuse prevention and/or treatment and/or mental health services for the proposed target population in the proposed catchment area. Documentation of need may come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.
- Describe the service gaps, barriers, and other problems related to the need for infrastructure development. Describe the stakeholders (see Glossary) and resources in the target area that can help implement the needed infrastructure development.
- Non-tribal applicants must show that identified needs are consistent with priorities of the State or county that has primary responsibility for the service delivery system. Include, in Appendix 5, a copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State- or county-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.

• Check the NOFA for any additional requirements.

Section B: Proposed Approach (35 points)

• Clearly state the purpose of the proposed project, with goals and objectives. Describe how achievement of goals will increase system capacity to support effective substance abuse and/or mental health services.

• Describe the proposed project. Provide evidence that the proposed activities meet the infrastructure needs and show how your proposed infrastructure development strategy will meet the goals and objectives.

• Provide a logic model (see Glossary) that demonstrates the linkage between the identified need, the proposed approach, and outcomes.

• If you plan to include an advisory body in your project, describe its membership, roles and functions, and frequency of meetings.

• Describe any other organizations that will participate and their roles and responsibilities. Demonstrate their commitment to the project. Include letters of commitment/coordination/support from these community organizations in Appendix 1 of the application. Identify any cash or in-kind contributions that will be made to the project.

• Describe how the proposed project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.

• Describe how members of the target population were involved in the preparation of the application, and how they will be involved in the planning, implementation, and evaluation of the project.

• Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.

• Describe how your activities will improve substance abuse prevention and/or treatment and/or mental health services.

• Provide a plan to secure resources to sustain the proposed infrastructure enhancements when Federal funding ends.

• Check the NOFA for any additional requirements.

Section C: Staff, Management, and Relevant Experience (25 points)

• Provide a realistic time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The time line should be part of the Project Narrative. It should not be placed in an appendix.]

• Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.

• Provide a list of staff who will participate in the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, such as the evaluator and treatment/prevention personnel.

• Describe the racial/ethnic characteristics of key staff and indicate if any are members of the target population/community. If the target population is multi-linguistic, indicate if the staffing pattern includes bilingual and bicultural individuals.

• Describe the resources available for the proposed project (*e.g.*, facilities, equipment). If an implementation pilot is proposed that includes direct services, provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.

• Check the NOFA for any additional requirements.

Section D: Evaluation and Data (30 points)

• Describe the process and outcome evaluation. Include specific performance measures and target outcomes related to the goals and objectives identified for the project in Section B of your Project Narrative.

• Document your ability to collect and report on the required performance measures as specified in the NOFA, including data required by SAMHSA to meet GPRA requirements. Specify and justify any additional measures you plan to use for your grant project.

• Describe plans for data collection, management, analysis, interpretation and reporting. Describe the existing approach to the collection of data, along with any necessary modifications. Be sure to include data collection instruments/interview protocols in Appendix 2.

• Discuss the reliability and validity of evaluation methods and instrument(s) in terms of the gender/age/culture of the target population.

• Describe how collection, analysis and reporting of performance data will be integrated into the evaluation activities.

• Check the NOFA for any additional requirements.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

• The strengths and weaknesses of the application as identified by peer reviewers and, when appropriate, approved by the appropriate National Advisory Council;

• Availability of funds;

• Equitable distribution of awards in terms of geography (including urban, rural and remote settings) and balance among target populations and program size; and

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points (Proposed Approach—35 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

2.1 General Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA web site at *www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

• Actions required to be in compliance with human subjects requirements;

• Requirements relating to additional data collection and reporting;

• Requirements relating to participation in a cross-site evaluation; or

• Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that infrastructure development and enhancement efforts can be sustained, your financial reports must explain plans to ensure the sustainability (see Glossary) of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. These requirements will be specified in the NOFA for each funding opportunity.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact:

Gwendolyn Simpson (CMHS), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 13–103, Rockville, MD 20857, (301) 443–4456, *gsimpson@samhsa.gov.*

Edna Frazier (CSAP), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–6816, *efrazier@samhsa.gov.*

Kathleen Sample (CSAT), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–9667, *ksample@samhsa.gov.*

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific NOFA and in Section III of the standard grant announcement. Please check the entire NOFA and Section III of the standard grant announcement before preparing your application.

—Use the PHS 5161–1 application.

—Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

—The 10 application components required for SAMHSA applications should be included. These are:

• Face Page (Standard Form 424, which is in PHS 5161–1)

• Abstract

• Table of Contents

• Budget Form (Standard Form 424A, which is in PHS 5161–1)

• Project Narrative and Supporting Documentation

• Appendices

• Assurances (Standard Form 424B, which is in PHS 5161–1)

• Certifications (a form in PHS 5161–1)

• Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)

• Checklist (a form in PHS 5161–1)

—Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the FY 2004 standard funding announcements.

• Budgetary limitations as specified in Section I, II, and IV–5 of the FY 2004 standard funding announcements.

• Documentation of nonprofit status as required in the PHS 5161–1.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost Sharing or Matching: Cost sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost sharing or matching is not required, and applications will not be screened out on the basis of cost sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Logic Model: A logic model is a diagrammatic representation of a theoretical framework. A logic model describes the logical linkages among program resources, conditions, strategies, short-term outcomes, and long-term impact. More information on how to develop logics models and examples can be found through the resources listed in Appendix C.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—Logic Model Resources

Chen, W.W., Cato, B.M., & Rainford, N. (1998–9). Using a logic model to plan and

evaluate a community intervention program: A case study. International Quarterly of Community Health Education, 18(4), 449–458.

Edwards, E.D., Seaman, J.R., Drews, J., & Edwards, M.E. (1995). A community approach for Native American drug and alcohol prevention programs: A logic model framework. Alcoholism Treatment Quarterly, 13(2), 43–62.

Hernandez, M. & Hodges, S. (2003). Crafting Logic Models for Systems of Care: Ideas into Action. [Making children's mental health services successful series, volume 1]. Tampa, FL: University of South Florida, The Louis de la Parte Florida Mental Health Institute, Department of Child & Family Studies. *http://cfs.fmhi.usf.edu* or phone (813) 974–4651

Hernandez, M. & Hodges, S. (2001). Theory-based accountability. In M. Hernandez & S. Hodges (Eds.), Developing Outcome Strategies in Children's Mental Health, pp. 21–40. Baltimore: Brookes.

Julian, D.A. (1997). Utilization of the logic model as a system level planning and evaluation device. Evaluation and Planning, 20(3), 251–257.

Julian, D.A., Jones, A., & Deyo, D. (1995). Open systems evaluation and the logic model: Program planning and evaluation tools. Evaluation and Program Planning, 18(4), 333–341.

Patton, M.Q. (1997). Utilization-Focused Evaluation (3rd Ed.), pp. 19, 22, 241. Thousand Oaks, CA: Sage.

Wholey, J.S., Hatry, H.P., Newcome, K.E. (Eds.) (1994). Handbook of Practical Program Evaluation. San Francisco, CA: Jossey-Bass Inc.

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–4692 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Republication of Standard Best Practices Planning and Implementation Grants Announcement

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of republication of Standard Best Practices Planning and Implementation Grants Announcement.

SUMMARY: On November 21, 2003, the Substance Abuse and Mental Health Services Administration published standard grant announcements for Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service to Science Grants. The primary purpose of this republication is to revise the criteria used to screen out applications from peer review. Motivated by the need to assure equitable opportunity and a "level playing field" to all applicants, SAMHSA believes the screening criteria in these announcements will not best serve the public unless revised and republished. This is a republication of the Best Practices Planning and Implementation Grants announcement. This republication makes those criteria more lenient, permitting a greater number of applications to be reviewed. The revisions to the criteria can be found, in their entirety, in: Section IV, Application and Submission Information; and Appendix A, Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications. Additional references to the criteria elsewhere in the text have been changed to be consistent with the revised criteria in Section IV and Appendix A.

In addition, this republication includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget.

This notice provides the republished text for SAMHSA's standard Best Practices Planning and Implementation Grants announcement.

DATES: Use of the republished standard Best Practices Planning and Implementation Grants announcement will be effective March 8, 2004. The standard Best Practices Planning and Implementation Grants announcement must be used in conjunction with separate Notices of Funding Availability (NOFAs) that will provide application due dates and other key dates for specific SAMHSA grant-funding opportunities.

ADDRESSES: Questions about SAMHSA's standard Best Practices Planning and Implementation Grants announcement may be directed to Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.* Phone: (301) 443–6902.

SUPPLEMENTARY INFORMATION: SAMHSA is republishing its standard Best Practices Planning and Implementation Grants announcement to make the criteria used to screen out applications from peer review more lenient, permitting a greater number of applications to be reviewed. This republication also includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget. The text for the republished standard Best Practices Planning and Implementation Grants announcement is provided below.

The standard Best Practices Planning and Implementation Grants announcement will be posted on SAMHSA's web page (*www.samhsa.gov*) and will be available from SAMHSA's clearinghouses on an ongoing basis. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, HIV/AIDS and Substance Abuse Prevention Planning Grants, *etc.*).

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Best Practices Planning and Implementation Grants BPPI 04 PA (MOD) (Modified Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *www.grants.gov*)

Key Dates

Application Deadline: This Program Announcement provides instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *www.grants.gov.*

Intergovernmental Review (E.O. 12372): Letters from State Single Point of Contact (SPOC) are due 60 days after application deadline.

Public Health System Impact Statement (PHSIS)/Single State Agency Coordination: Applicants must send the PHSIS to appropriate State and local health agencies by application deadline.

Comments from Single State Agency are due 60 days after application deadline.

Table of Contents

I. Funding Opportunity Description

1. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Best Practices Planning and Implementation (BPPI) grants for substance abuse prevention, substance abuse treatment, and mental health services. These grants will help communities and providers identify substance abuse prevention, substance abuse treatment, and/or mental health practices, develop strategic plans for implementing/adapting those practices, and pilot-test the practices. The practices proposed by applicants for SAMHSA's BPPI grants must incorporate the best objective information available regarding effectiveness and acceptability. Often, these practices will have strong evidence of effectiveness. However, because the evidence base is limited in some areas, SAMHSA may fund some practices for which the evidence base, while limited, is sound.

SAMHSA also funds grants under three other standard grant announcements:

- *Services Grants* provide funding to implement substance abuse and mental health services.
- *Infrastructure Grants* support identification and implementation of systems changes but are not designed to fund services.
- *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

This announcement describes the general program design and provides application instructions for all SAMHSA BPPI Grants. The availability of funds for specific BPPI Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *www.grants.gov*—the Federal grant announcement web page.

SAMHSA's BPPI Grants are authorized under Section 509, 516 and/or 520A of the Public Health Service Act, unless otherwise specified in a NOFA in the **Federal Register** and on *www.grants.gov*.

Typically, funding for BPPI Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, award size, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

2. Expectations

SAMHSA's BPPI program promotes the use of practices that incorporate the best objective information available regarding effectiveness and acceptability. SAMHSA refers to these as "best practices." BPPI grants may address needs in the areas of substance abuse prevention, substance abuse treatment and/or mental health services. SAMHSA understands that the "best practices" proposed for BPPI grants may need to be adapted to certain populations. Therefore, SAMHSA's BPPI grants support adaptation and evaluation of best practices in addition to planning and implementation.

2.1 Documenting the Evidence Base for Selected Practices

Applicants must document in their applications that the practices they propose to implement are evidence-based practices. In addition, applicants must justify use of the proposed practices for the target population along with any adaptations or modifications necessary to meet the unique needs of the target population or otherwise increase the likelihood of achieving positive outcomes. Further guidance on each of these requirements is provided below.

Documenting the Evidence-Based Practice/Service

SAMHSA has already determined that certain practices are solidly evidence-based practices and encourages applicants to select practices from the following sources (though this is not required):

- SAMHSA's National Registry of Effective Programs (NREP) (*see* Appendix C)
- Center for Mental Health Services (CMHS) Evidence-Based Practice Tool Kits (*see* Appendix D)
- List of Evidence-Based Substance Abuse Treatment Practices (*see* Appendix E)
- Additional practices identified in the NOFA for a specific funding opportunity, if applicable

Applicants proposing practices that are not included in the above-referenced sources must provide a narrative justification that summarizes the evidence for effectiveness and acceptability of the proposed practice. The preferred evidence of effectiveness and acceptability will include the findings from clinical trials, efficacy and/or effectiveness studies published in the peer-reviewed literature.

In areas where little or no research has been published in the peer-reviewed scientific literature, the applicant may present evidence involving studies that have not been published in the peer-reviewed research literature and/or documents describing formal consensus among recognized experts. If consensus documents are presented, they must describe consensus among multiple experts whose work is recognized and respected by others in the field. Local recognition of an individual as a respected or influential person at the community level is not considered a "recognized expert" for this purpose.

In presenting evidence in support of the proposed practice, applicants must show that the evidence presented is the best objective information available.

Justifying Selection of the Practice/Service for the Target Population

Regardless of the strength of the evidence base for the practice, all applicants must show that the proposed practice is appropriate for the proposed target population. Ideally, this evidence will include research findings on effectiveness and acceptability specific to the proposed target population. However, if such evidence is not available, the applicant should provide a justification for using the proposed practice with the target population. This justification might involve, for example, a description of adaptations to the proposed practice based on other research involving the target population.

Justifying Adaptations/Modifications of the Proposed Practice

SAMHSA has found that a high degree of faithfulness or "fidelity" (see Glossary) to the original model for an evidence-based practice increases the likelihood that positive outcomes will be achieved when the model is used by others. Therefore, SAMHSA encourages fidelity to the original evidence-based practice to be implemented. However, SAMHSA recognizes that adaptations or modifications to the original model may be necessary for a variety of reasons:

- To allow implementers to use resources efficiently.
- To adjust for specific needs of the client population.
- To address unique characteristics of the local community where the practice will be implemented.

All applicants must describe and justify any adaptations or modifications to the proposed practice that will be made.

2.2 Program Design

SAMHSA will fund BPPI grants in two phases. Phase I is a planning and consensus-building phase that supports grantees for up to 18 months. Phase II is a pilot, adaptation, implementation, and evaluation phase that supports grantees for up to 3 years.

Phase I: Planning and Consensus Building

The goals of Phase I are to achieve consensus among community stakeholders to adopt a best practice and to engage in strategic planning for its implementation. Phase I grants may include, but are not limited to, the following types of activities:

- Build and maintain a coalition of stakeholders to fund, oversee, use, and provide a sustainable best practice.
- Train and educate key stakeholders about the best practice.
- Consult experts about the practice.
- Consult leaders from other communities about their experiences in implementing the practice.
- Reimburse stakeholders for their transportation or child care costs.
- Engage professionals to help build consensus and plan strategy.
- Adapt the best practice to community needs without sacrificing its effectiveness.
- Identify and obtain the commitment of permanent sources to fund the best practice.
- Design the evaluation of the best practice.
- Evaluate the process of consensus building among stakeholders (required).

Phase II: Pilot test, Adaptation, Implementation, and Evaluation

The goals of Phase II grants are to pilot test and evaluate the best practices before full implementation, modify strategic/financial plans, and prepare for full-scale implementation. Implementation does not include service delivery. The following are examples of activities that can be funded during Phase II:

- Pilot test the practice on a sample of service recipients and evaluate the pilot test.
- Modify the best practice based on consultation with stakeholders and practice experts, other community experiences, and pilot test results.
- Revise the manual or documentation that describes in detail how the best practice was modified.
- Maintain the coalition of stakeholders to oversee Phase II activities.
- Secure consultants to make changes required to implement and finance the best practice.
- Make organizational changes (*e.g.*, hiring staff) necessary to implement the best practice.
- Provide necessary education, training, and technical assistance for staff.

Up to 25% of the Phase II grant award may be used to evaluate the pilot test of the best practice. During the course of a Phase II award, SAMHSA will provide funding for direct services as part of the pilot test.

2.3 Performance Requirements

All grantees will be required to meet the following evaluation and performance requirements. Applicants are not required to receive a Phase I award before applying for a Phase II award. However, all Phase II applicants must meet the Phase I performance requirements (*i.e.*, documentation that consensus has been achieved and that a strategic plan is in place) before applying for a Phase II award. Phase II applicants need not have been Phase I grantees.

Phase I: Planning and Consensus Building

By the end of Phase I, grantees will be required to provide documentation that consensus has been achieved for adopting a best practice. That documentation must include:

- A report that summarizes the evaluation of the consensus building process.
- A description of how key stakeholders were included in the consensus building.
- Letters of support or other demonstration of stakeholders' commitment to adopt the practice.
- A strategic plan for implementing the best practice that includes a financing plan, signed by the funding source(s) that will provide the resources necessary to address barriers and implement a sustainable best practice. [**Note:** if it is not possible for a grantee to complete a strategic plan, grantees will be required to provide an analysis of progress made and barriers to completing the strategic plan instead.]

Phase II: Pilot Test, Adaptation, Implementation, and Evaluation

By the end of Phase II, grantees must provide the following information:

- Pilot test results.
- Results from process/outcome evaluation of full Phase II project.
- In cases where the implementation was judged a success, a manual describing the practice in detail for replication of the practice. The manual should explain how the project team determined the degree of success, referring to qualitative and quantitative data.
- In cases where the implementation was judged not to be successful, a report detailing the lessons learned, with recommendations for other programs interested in implementing the best practice. The report should explain how the project team determined the degree of success, referring to qualitative and quantitative data.
- Documentation that staff are trained in the practice and of a mechanism for training new staff.
- Process evaluation results that describe how the practice was operationalized, including changes in the organizational infrastructure, permanent funding sources, and staff consultation and training activities.
- Outcome evaluation results that describe:
- Demographic characteristics of the clients served
- Service utilization
- Practice outcomes
- Client satisfaction
- Fidelity of the modified practice to the best practice
- Plans for fully implementing the best practice after the end of the Phase II award

2.4 Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to set program performance targets and report annually on the degree to which the previous year's targets were met.

Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding.

To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis.

Specifically, grantees will be required to provide data on a set of required measures, as specified in the NOFA. The data collection tools to be used for reporting the required data will be provided in the application kits distributed by SAMHSA's clearinghouses and posted on SAMHSA's website along with each NOFA. In your application, you must demonstrate your ability to collect and report on these measures, and you may be required to provide some baseline data.

The terms and conditions of the grant award also will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

Applicants should be aware that SAMHSA is working to develop a set of required core performance measures for each of SAMHSA's standard grants (*i.e.*, Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). As this effort proceeds, some of the data collection and reporting requirements included in SAMHSA's NOFAs may change. All grantees will be expected to comply with any changes in data collection requirements that occur during the grantee's project period.

2.5 Evaluation

Grantees must evaluate their projects, and applicants are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project to improve implementation of the best practice and, ultimately, the outcomes that will result from implementation of the best practice.

Phase I grantees must conduct a process evaluation. Phase II grantees must conduct a process and outcome evaluation of the pilot test, as well as a process and outcome evaluation of the full Phase II project.

Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Both Phase I and Phase II grantees must include the require performance measures described in the NOFA in their evaluations. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

- How closely did implementation match the plan?

• What types of deviation from the plan occurred?

• What led to the deviations?

• What effect did the deviations have on the intervention and evaluation?

• For pilot test evaluations, who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

• What was the effect of the project on the service delivery system and/or on participants in the project?

• What program/contextual factors were associated with outcomes?

• What individual factors were associated with outcomes?

• How durable were the effects?

No more than 20% of the total Phase I grant award and 25% of the total Phase II grant award may be used for evaluation and data collection.

2.6 Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, D.C., area, and attendance is mandatory.

II. Award Information

1. Award Amount

The NOFA will specify the expected award amount for each funding opportunity. Regardless of the amount specified, the actual award amount will depend on the availability of funds.

Awards for SAMHSA's BPPI grants will be made in two phases:

Phase I—Phase I awards are expected to range from $150,000–$200,000 in total costs (direct and indirect) for a project period of up to 18 months.

Phase II—Phase II awards will range from $300,000–$500,000 per year in total costs (direct and indirect) for a project period of up to 3 years.

Proposed budgets cannot exceed the allowable amount as specified in the NOFA in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

2. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (see the Glossary in Appendix B for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic public and private nonprofit entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

2. Cost Sharing

Cost sharing (*see* Glossary) is not required in this program, and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind (*see* Glossary) contributions in your proposal as evidence of commitment to the proposed project.

3. Other

Applications must comply with the following requirements, or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document. Applicants should be aware that the NOFA may include additional requirements that, if not met, will result in applications being screened out and returned without review. These requirements will be specified in Section III–3 of the NOFA.

You also must comply with any additional program requirements specified in the NOFA, such as the required signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

• For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

• For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA web site at *www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this web site include:

• A technical assistance manual for potential applicants;

• Standard terms and conditions for SAMHSA grants;

• Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and

• Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

• PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. Applicants must use the PHS 5161–1 for their application, unless otherwise specified in the NOFA. Applications that are not submitted on the required application form (*i.e.*, the PHS 5161–1 in most situations) will be screened out and will not be reviewed.

• Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.

• Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register** as well as on the Federal grants web site (*www.grants.gov*).

You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

—Face Page—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet web site at *www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

—Abstract—Your total abstract should be no longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

—Table of Contents—Include page numbers for each of the major sections of your application and for each appendix.

—Budget Form—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.

—Project Narrative and Supporting Documentation—The Project Narrative describes your project. It consists of Sections A through E for Phase I and Section A through D for Phase II. Sections A–E (Phase I) together may not be longer than 30 pages and Sections A though D (Phase II) together may not be longer than 30 pages. More detailed instructions for

completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections F through I. (**Note:** Phase II applications will not have a Section E.) There are no page limits for these sections, except for Section H, the Biographical Sketches/Job Descriptions.

• Section F—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• Section G—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. If you are applying for a Phase II award, show that no more than 25% of the total grant award will be used for evaluation of the pilot test of the best practice.

• Section H—Biographical Sketches and Job Descriptions.

• Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

• Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

• Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• Section I—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

—Appendices 1 through 6—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1, 3, 4 and 6. There are no page limitations for Appendices 2 and 5. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

• Appendix 1: Letters of Support.

• Appendix 2: Data Collection Instruments/Interview Protocols.

• Appendix 3: Sample Consent Forms.

• Appendix 4: Letter to the SSA (if applicable; see Section IV–4 of this document).

• Appendix 5: A copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State- or county-identified priority.

• Appendix 6: Evidence of Intent to Adopt (Phase II only).

—Assurances—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. Some applicants will be required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations Form SMA 170. If this assurance applies to a specific funding opportunity, it will be posted on SAMHSA's web site with the NOFA and provided in the application kits available at SAMHSA's clearinghouse (NCADI).

—Certifications—Use the "Certifications" forms found in PHS 5161–1.

—Disclosure of Lobbying Activities—Use Standard Form LLL found in PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

—Checklist—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 30-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 30. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The 30-page limit for Appendices 1, 3, 4 and 6 cannot be exceeded. To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

2.4 SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

Applicants must describe procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section I of the application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of the application may result in the delay of funding.

Confidentiality and Participant Protection

All applicants *must* describe how they will address requirements for each of the following elements relating to confidentiality and participant protection.

1. *Protect Clients and Staff from Potential Risks:*

• Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide guidance and assistance in the event there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. *Fair Selection of Participants:*

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other target groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.

• Explain the reasons for including or excluding participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. *Absence of Coercion:*

• Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.

• If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, *etc.*).

• State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. *Data Collection:*

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. *Privacy and Confidentiality:*

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. *Adequate Consent Procedures:*

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

• Whether or not their participation is voluntary.

• Their right to leave the project at any time without problems.

• Possible risks from participation in the project.

• Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain written informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 3, "Sample Consent Forms," of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. *Risk/Benefit Discussion:*

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

All applicants proposing a pilot test of the best practice as part of a Phase II project must comply with the Protection of Human Subjects Regulations (45 CFR part 46).

Even if you are not proposing a Phase II pilot test of the best practice, the Protection of Human Subjects Regulations could apply depending on the evaluation you propose.

If you are a Phase II applicant proposing a pilot test or your project otherwise falls under the Protection of Human Subjects Regulations, you must describe the process for obtaining Institutional Review Board (IRB) approval in your application. While IRB approval is not required at the time of grant award, you will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and the IRB approval has been received before enrolling clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be published in the NOFAs in the **Federal Register** and posted on the Federal grants web site (*www.grants.gov*). Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) web site at *www.whitehouse.gov/omb/grants/spoc.html*.

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857, Attn: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

In addition, community-based, non-governmental service providers who are not transmitting their applications through the

State must submit a Public Health System Impact Statement (PHSIS) (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of appropriate State or local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to these requirements.

The PHSIS consists of the following information:

- A copy of the face page of the application (SF 424); and
- A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA must include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857, Attn: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, Attn: PRA (0920–0428).]

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21.
- State and Local Governments: OMB Circular A–87.
- Nonprofit Organizations: OMB Circular A–122.
- Appendix E Hospitals: 45 CFR Part 74.

In addition, SAMHSA BPPI Grant recipients must comply with the following funding restrictions:

- No more than 25% of Phase II funding may be used to evaluate the pilot test. BPPI grant funds may not be used to:
- Pay for any lease beyond the project period.
- Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
- Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request no more than $75,000 for renovations and alterations of existing facilities, if appropriate and necessary to the project.)
- Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
- Pay for housing other than residential mental health and/or substance abuse treatment.
- Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
- Pay for incentives to induce clients to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, childcare, and vouchers) to clients as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
- Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.
- Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STDs)/sexually transmitted illness (STI), TB, and hepatitis B and C, or for psychotropic drugs.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the quality of your response to the requirements listed below for developing the Project Narrative (Sections A–E for Phase I applications and A–D for Phase II applications). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- The Project Narrative may be no longer than 30 pages.
- You must use the sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section of the Project Narrative.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA web site at *www.samhsa.gov*. Click on "Grant Opportunities."
- The Supporting Documentation you provide in Sections F-I and Appendices 1–5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within the criterion.

1.1 Phase I Criteria

Section A: Statement of Need (10 Points)

- Describe the environment (organization, community, city, or State) where the project will be implemented.
- Describe the target population (see Glossary) as well as the geographic area to be served, and justify the selection of both. Include numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering programs to this population.
- Describe the problem the project will address. Documentation of the problem may come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on

how the data were collected so reviewers can assess the reliability and validity of the data.

• Non-tribal applicants must show that identified needs are consistent with the priorities of the State or county that has primary responsibility for the service delivery system. Include, in Appendix 5, a copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State- or county-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.

• Describe the best practice selected and how it will impact the problem.

• Check the NOFA for any additional requirements.

Section B: Proposed Evidence-Based Practice (30 Points)

• Clearly state the purpose, goals and objectives of your proposed project. Describe how achievement of goals will address the needs identified in Section A. Provide a logic model (see Glossary) that links need, key components of the proposed project, and goals/objectives/outcomes of the proposed project.

• Identify the evidenced based practice that you propose to implement. Describe the evidence-base for the proposed practice and show that it incorporates the best objective information available regarding effectiveness and acceptability. Follow the instructions provided in #1, #2 or #3 below, as appropriate. Depending on the evidence you provide, you may follow more than one set of instructions:

1. *If you are proposing to implement a practice included in NREP (see Appendix C), one of the CMHS tool-kits on evidence-based practices (see Appendix D), the list of Effective Substance Abuse Treatment Practices (see Appendix E), or the NOFA (if applicable),* simply identify the practice and state the source from which it was selected. You do not need to provide further evidence of effectiveness.

2. *If you are providing evidence that includes scientific studies published in the peer-reviewed literature or other studies that have not been published, describe the extent to which:*

—The practice has been evaluated and the quality of the evaluation studies (*e.g.*, whether they are descriptive, quasi-experimental studies, or experimental studies)

—The practice has demonstrated positive outcomes and for what populations the positive outcomes have been demonstrated

—The practice has been documented (*e.g.*, through development of guidelines, tool kits, treatment protocols, and/or manuals) and replicated

—Fidelity measures have been developed (*e.g.*, no measures developed, key components identified, or fidelity measures developed)

3. *If you are providing evidence based on a formal consensus process involving recognized experts in the field, describe:*

The experts involved in developing consensus on the proposed service/practice (*e.g.*, members of an expert panel formally convened by SAMHSA, NIH, the Institute of Medicine or other nationally recognized organization). The consensus must have been developed by a group of experts whose work is recognized and respected by others in the field. Local recognition of an individual as a respected or influential person at the community level is not considered a "recognized expert" for this purpose.

—The nature of the consensus that has been reached and the process used to reach consensus

—The extent to which the consensus has been documented (*e.g.*, in a consensus panel report, meeting minutes, or an accepted standard practice in the field)

—Any empirical evidence (whether formally published or not) supporting the effectiveness of the proposed services/practice

—The rationale for concluding that further empirical evidence does not exist to support the effectiveness of the proposed services/practice

• Justify the use of the proposed practice for the target population. Describe the types of modifications/adaptations that may be necessary to meet the needs of the target population, and describe how you will make a final determination about the adaptations/modifications to be made to meet the needs of the population.

• Identify any additional adaptations or modifications that may be necessary to successfully implement the proposed practice in the target community. Describe how you will make a final determination about the adaptations/modifications to be made.

• Describe how the proposed project will address issues of age, race, ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population, while retaining fidelity to the chosen practice.

• Check the NOFA for any additional requirements.

Section C: Proposed Implementation Approach (25 Points)

• Describe how the proposed grant project will be implemented. Provide a realistic time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The timeline should be part of the Project Narrative. It should not be placed in an appendix.]

• Describe the strategies or models that will be used to build consensus, including a description of how key stakeholders (see Glossary) will be educated about the best practice. Describe potential barriers to achieving consensus among stakeholders. What resources and plans will you use to overcome these barriers?

• Describe the process that will be used to develop a strategic plan to implement the best practice. Address such issues as needs assessment, identification of specific milestones that must be achieved in order to implement the best practice, and plans for assigning responsibility for achieving milestones among participating organizations/stakeholders. Identify potential funding source(s) that will help implement the best practice. Describe how the funder(s) will join in the consensus building and strategic planning.

• Describe the key stakeholders (including representatives of the target population), how they were selected for participation in the project, and how they represent the community.

• Describe the involvement of key stakeholders in the proposed project, including roles and responsibilities of each stakeholder. Clearly demonstrate each stakeholder's commitment to the consensus building and strategic planning processes. Attach letters of support and other documents showing stakeholder commitment in Appendix 1: Letters of Support. Identify any cash or in-kind contributions that will be made to the project by the applicant or other partnering organizations.

• Describe how the project components will be embedded within the existing service delivery system, including other SAMHSA-funded projects, if applicable.

• Check the NOFA for any additional requirements.

Section D: Management Plan and Staffing (20 Points)

• Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.

• Provide a list of staff members who will conduct the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, including evaluators and database management personnel.

• Provide evidence that the service staff proposed to conduct the evidence-based practice have the level of abilities and experience necessary to implement the practice with fidelity to the model, once they have received any necessary training.

• Identify the project staff or contractor(s) who will develop the implementation manual, and demonstrate that they have the requisite skills and experience.

• Describe the racial/ethnic characteristics of key staff and indicate if any are members of the target population/community. If the target population is multi-linguistic, indicate if the staffing pattern includes bilingual or bicultural individuals.

• If you plan to have an advisory body, describe its composition, roles, and frequency of meetings.

• Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.

• Check the NOFA for any additional requirements.

Section E: Evaluation Design and Analysis (15 Points)

• Describe the design for evaluating the consensus building and strategic planning processes. Include a detailed discussion of how all variables (*e.g.*, community representation and stakeholder support) will be defined and measured. Explain how the

evaluation plan will ensure that the decision to adopt is an accurate reflection of the stakeholders' intent.

• Document your ability to collect and report on the required performance measures as specified in the NOFA, including data required by SAMHSA to meet GPRA requirements. Specify and justify any additional measures you plan to use for your grant project.

• Describe the process for providing regular feedback from evaluation activities to the Project Director and participants.

• Describe plans for data collection, management, analysis, interpretation and reporting. Describe the existing approach to the collection of relevant data, along with any necessary modifications.

• Discuss the reliability and validity of evaluation methods and instruments(s) in terms of the gender/age/culture of the target population.

• Check the NOFA for any additional requirements.

1.2 Phase II Criteria

Section A: Need, Justification of Best Practice, and Readiness (30 Points)

If you previously received a Phase I BBPI award and are applying for a Phase II award to continue the project, include the following information:

• Describe briefly the target population (see Glossary), setting, need and best practice approved for the Phase I award.

• Describe and justify any changes to the target population and setting. Discuss the factors that led to a decision change in the target population and setting.

• Describe any changes in the need for the best practice in the target community. The statement of need should include a clearly established baseline for the project. Documentation of need may come from a variety of qualitative and quantitative sources. The quantitative data could come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/ Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.

• Provide an updated projection of the number of individuals to be served as well as demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering programs to this population.

• Describe and justify any additional modifications or adaptations to the best practice as compared to the practice approved for your Phase I project.

• Provide evidence that the community of stakeholders (see Glossary) achieved a "decision to adopt" the practice. Attach a copy of the Phase I process evaluation or other evidence including contracts, memoranda of agreement, administrative memos, or other documents signed by key stakeholders that show their firm commitment to support the practice. Attach these supporting documents in Appendix 6: Evidence of Intent to Adopt.

• Provide and describe the financing plan. Include anticipated costs and sources of revenue that will maintain the practice. Attach the financing plan, signed by the funding source(s), stating their intent to fund in Appendix 6: Evidence of Intent to Adopt.

• Check the NOFA for any additional requirements.

If you are applying for a Phase II award but did not previously receive a Phase I award, include the following information:

• Clearly state the purpose, goals and objectives of your proposed project. Describe how achievement of goals will produce meaningful and relevant results. Provide a logic model (see Glossary) that links need, the services or practice to be implemented, and outcomes.

• Describe the target population as well as the geographic area to be served, and justify the selection of both. Include the numbers to be served and demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering programs to this population.

• Describe the nature of the problem and extent of the need for the target population based on data. The statement of need should include a clearly established baseline for the project. Documentation of need may come from a variety of qualitative and quantitative sources. The quantitative data could come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/ Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.

• Non-tribal applicants must show that identified needs are consistent with priorities of the State or county. Include, in Appendix 5, a copy of the State or County Strategic Plan, a State or county needs assessment, or a letter from the State or county indicating that the proposed project addresses a State- or county-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.

• Identify the evidenced based service/ practice that you propose to implement. Describe the evidence-base for the proposed service/practice and show that it incorporates the best objective information available regarding effectiveness and acceptability. Follow the instructions provided in #1, #2 or #3 below, as appropriate:

1. *If you are proposing to implement a service/practice included in NREP (see Appendix C), one of the CMHS tool-kits on evidence-based practices (see Appendix D), the list of Effective Substance Abuse Treatment Practices (see Appendix E), or the NOFA (if applicable),* simply identify the practice and state the source from which it was selected. You do not need to provide further evidence of effectiveness.

2. *If you are providing evidence that includes scientific studies published in the peer-reviewed literature or other studies that have not been published, describe the extent to which:*

—The service/practice has been evaluated and the quality of the evaluation studies (*e.g.*, whether they are descriptive, quasi-experimental studies, or experimental studies)

—The service/practice has demonstrated positive outcomes and for what populations the positive outcomes have been demonstrated

—The service/practice has been documented (*e.g.*, through development of guidelines, tool kits, treatment protocols, and/or manuals) and replicated

—Fidelity measures have been developed (*e.g.*, no measures developed, key components identified, or fidelity measures developed)

3. *If you are providing evidence based on a formal consensus process involving recognized experts in the field, describe:*

—The experts involved in developing consensus on the proposed service/practice (*e.g.*, members of an expert panel formally convened by SAMHSA, NIH, the Institute of Medicine or other nationally recognized organization). The consensus must have been developed by a group of experts whose work is recognized and respected by others in the field. Local recognition of an individual as a respected or influential person at the community level is not considered a "recognized expert" for this purpose.

—The nature of the consensus that has been reached and the process used to reach consensus

—The extent to which the consensus has been documented (*e.g.*, in a consensus panel report, meeting minutes, or an accepted standard practice in the field)

—Any empirical evidence (whether formally published or not) supporting the effectiveness of the proposed services/ practice

—The rationale for concluding that further empirical evidence does not exist to support the effectiveness of the proposed services/practice

• Justify the use of the proposed service/ practice for the target population. Describe and justify any adaptations necessary to meet the needs of the target population, as well as evidence that such adaptations will be effective for the target population.

• Identify and justify any additional adaptations or modifications to the proposed service/practice.

• Describe the community of stakeholders in the project, and provide evidence that they have achieved a "decision to adopt" the practice. Such evidence may include contracts, memoranda of agreement, administrative memos, or other documents signed by key stakeholders that show their firm commitment to support the practice. Attach these supporting documents in Appendix 6: Evidence of Intent to Adopt.

• Provide and describe the financing plan. Include anticipated costs and sources of revenue that will maintain the practice. Attach the financing plan, signed by the funding source(s), stating their intent to fund in Appendix 6: Evidence of Intent to Adopt.

• Check the NOFA for any additional requirements.

Section B: Proposed Approach (25 Points)

• Provide a strategic plan, including key action steps, that addresses each of the following elements, as appropriate: pilot testing the best practice, evaluating the pilot test, modifying the best practice based on the pilot test, developing training materials, hiring/training staff, and securing funding to sustain services beyond the project period.

• Describe the involvement of key stakeholders in the proposed project, including roles and responsibilities of each stakeholder. Demonstrate each stakeholder's commitment to the proposed project. Attach letters of support and similar documents showing stakeholder commitment in Appendix 1: Letters of Support. Identify any cash or in-kind contributions that will be made to the project.

• Describe how the proposed project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.

• Describe potential barriers to the successful conduct of the proposed project and how you will overcome them.

• Describe oversight or feedback mechanisms to ensure that the implemented practice is consistent with the best practice model.

• Check the NOFA for any additional requirements.

Section C: Management Plan and Staffing (25 Points)

• Provide a realistic time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The time line should be part of the Project Narrative. It should not be placed in an appendix.]

• Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.

• Provide a list of staff members who will conduct the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, including evaluators and database managers.

• Describe the racial/ethnic characteristics of key staff and indicate if any are members of the target population/community. If the target population is multi-linguistic, indicate if the staffing pattern includes bilingual and bicultural individuals.

• Describe the resources available for the proposed project (e.g., facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, Americans with Disabilities Act (ADA) compliant, and is amenable to the target population.

• Check the NOFA for any additional requirements.

Section D: Evaluation Design and Analysis (20 Points)

• Document your ability to collect and report on the required performance measures as specified in the NOFA, including data required by SAMHSA to meet GPRA requirements. Specify and justify any additional measures you plan to use for your grant project.

• Provide a logic model (see Glossary) for the evaluation of the pilot test of the best practice as well as other implementation activities (e.g., training, securing financing).

• Provide a plan for evaluating the pilot test of the best practice and other implementation activities that includes both process and client outcome measures. Describe the recruitment plan and sample size for your project. Describe any literature or pilot testing done to verify the validity and reliability of the instruments to be used. Also discuss the appropriateness of the evaluation methods and instrument(s) in terms of the gender/age/culture of the target population. Attach instrumentation in Appendix 2: Data Collection Instruments.

• Describe how the adaptations of the best practice will be documented. Demonstrate its fidelity to the best practice model. If no fidelity scale exists for the practice, describe how you will develop one.

• Describe the process for providing regular feedback from evaluation activities to the Project Director and participants.

• Describe the database management system that will be developed.

• Check the NOFA for any additional requirements.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

• The strengths and weaknesses of the application as identified by peer reviewers and, when appropriate, approved by the appropriate National Advisory Council;

• Availability of funds;

• Equitable distribution of awards in terms of geography (including urban, rural and remote settings) and balance among target populations and program size; and

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points (for Phase I, Proposed Evidence-Based Practice—30 points; for Phase II, Need, Justification of Best Practice, and Readiness—30 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA web site at *www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

• Actions required to be in compliance with human subjects requirements;

• Requirements relating to additional data collection and reporting;

• Requirements relating to participation in a cross-site evaluation; or

• Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the

project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that its best practices efforts can be sustained, your financial reports must explain plans to ensure the sustainability (see Glossary) of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. These requirements will be specified in the NOFA for each funding opportunity.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact:

Gwendolyn Simpson (CMHS), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 12–103, Rockville, MD 20857, (301) 443–4456, *gsimpson@samhsa.gov*.

Edna Frazier (CSAP), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–6816, *efrazier@samhsa.gov*.

Kathleen Sample (CSAT), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–9667, *ksample@samhsa.gov*.

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific NOFA and in Section III of the standard grant announcement. Please check the entire NOFA and Section III of the standard grant announcement before preparing your application.

—Use the PHS 5161–1 application.

—Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

—The 10 application components required for SAMHSA applications should be included. These are:

- Face Page (Standard Form 424, which is in PHS 5161–1)
- Abstract
- Table of Contents
- Budget Form (Standard Form 424A, which is in PHS 5161–1)
- Project Narrative and Supporting Documentation
- Appendices
- Assurances (Standard Form 424B, which is in PHS 5161–1)
- Certifications (a form in PHS 5161–1)
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
- Checklist (a form in PHS 5161–1)

—Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the FY 2004 standard funding announcements.

• Budgetary limitations as specified in Section I, II, and IV–5 of the FY 2004 standard funding announcements.

• Documentation of nonprofit status as required in the PHS 5161–1.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-

sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost sharing or Matching: Cost sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost sharing or matching is not required, and applications will not be screened out on the basis of cost sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Logic Model: A logic model is a diagrammatic representation of a theoretical framework. A logic model describes the logical linkages among program resources, conditions, strategies, short-term outcomes, and long-term impact. More information on how to develop logics models and examples can be found through the resources listed in Appendix F.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—National Registry of Effective Programs

To help SAMHSA's constituents learn more about science-based programs, SAMHSA's Center for Substance Abuse Prevention (CSAP) created a National Registry of Effective Programs (NREP) to review and identify effective programs. NREP seeks candidates from the practice community and the scientific literature. While the initial focus of NREP was substance abuse prevention programming, NREP has expanded its scope and now includes prevention and treatment of substance abuse and of co-occurring substance abuse and mental disorders, and psychopharmacological programs and workplace programs.

NREP includes three categories of programs: Effective Programs, Promising Programs, and Model Programs. Programs defined as Effective have the option of becoming Model Programs if their developers choose to take part in SAMHSA dissemination efforts. The conditions for making that choice, together with definitions of the three major criteria, are as follows.

Promising Programs have been implemented and evaluated sufficiently and are scientifically defensible. They have positive outcomes in preventing substance abuse and related behaviors. However, they have not yet been shown to have sufficient rigor and/or consistently positive outcomes required for Effective Program status. Nonetheless, Promising Programs are eligible to be elevated to Effective/Model status after review of additional documentation regarding program effectiveness. Originated from a range of settings and spanning target populations, Promising Programs can guide prevention, treatment, and rehabilitation.

Effective Programs are well-implemented, well-evaluated programs that produce consistently positive pattern of results (across domains and/or replications). Developers of Effective Programs have yet themselves.

Model Programs are also well-implemented, well-evaluated programs, meaning they have been reviewed by NREP according to rigorous standards of research. Their developers have agreed with SAMHSA to provide materials, training, and technical assistance for nationwide implementation. That helps ensure the program is carefully implemented and likely to succeed.

Programs that have met the NREP standards for each category can be identified by accessing the NREP Model Programs Web site at *www.modelprograms.samhsa.gov.*

Appendix D—Center for Mental Health Services Evidence-Based Practice Toolkits

SAMHSA's Center for Mental Health Services and the Robert Wood Johnson Foundation initiated the Evidence-Based Practices Project to: (1) Help more consumers and families find effective services, (2) help providers of mental health services develop effective services, and (3) help administrators support and maintain these services. The project is now also funded and endorsed by numerous national, State, local, private and public organizations, including the Johnson & Johnson Charitable Trust, MacArthur Foundation, and the West Family Foundation.

The project has been developed through the cooperation of many Federal and State mental health organizations, advocacy groups, mental health providers, researchers, consumers and family members. A website *(www.mentalhealthpractices.org)* was created as part of Phase I of the project, which included the identification of the first cluster of evidence-based practices and the design of implementation resource kits to help people understand and use these practices successfully.

Basic information about the first six evidence-based practices is available on the web site. The six practices are:

1. Illness Management and Recovery
2. Family Psychoeducation
3. Medication Management Approaches in Psychiatry
4. Assertive Community Treatment
5. Supported Employment

6. Integrated Dual Disorders Treatment

Each of the resource kits contains information and materials written by and for the following groups:

—Consumers
—Families and Other Supporters
—Practitioners and Clinical Supervisors
—Mental Health Program Leaders
—Public Mental Health Authorities

Material on the web site can be printed or downloaded with Acrobat Reader, and references are provided where additional information can be obtained.

Once published, the full kits will be available from National Mental Health Information Center at *www.health.org* or 1–800–789–CMHS (2647).

Appendix E—Effective Substance Abuse Treatment Practices

To assist potential applicants, SAMHSA's Center for Substance Abuse Treatment (CSAT) has identified the following listing of current publications on effective treatment practices for use by treatment professionals in treating individuals with substance abuse disorders. These publications are available from the National Clearinghouse for Alcohol and Drug Information (NCADI); Tele: 1–800–729–6686 or *www.health.org* and *www.samhsa.gov/centers/csat2002/publications.html.*

CSAT Treatment Improvement Protocols (TIPs) are consensus-based guidelines developed by clinical, research, and administrative experts in the field.

- *Integrating Substance Abuse Treatment and Vocational Services.* TIP 38 (2000) NCADI # BKD381.
- *Substance Abuse Treatment for Persons with Child Abuse and Neglect Issues.* TIP 36 (2000) NCADI # BKD343.
- *Substance Abuse Treatment for Persons with HIV/AIDS.* TIP 37 (2000) NCADI # BKD359.
- *Brief Interventions and Brief Therapies for Substance Abuse.* TIP 34 (1999) NCADI # BKD341.
- *Enhancing Motivation for Change in Substance Abuse Treatment.* TIP 35 (1999) NCADI # BKD342.
- *Screening and Assessing Adolescents for Substance Use Disorders.* TIP 31 (1999) NCADI # BKD306.
- *Treatment for Stimulant Use Disorders.* TIP 33 (1999) NCADI # BKD289.
- *Treatment of Adolescents with Substance Use Disorders.* TIP 32 (1999) NCADI # BKD307.
- *Comprehensive Case Management for Substance Abuse Treatment.* TIP 27 (1998) NCADI # BKD251.
- *Continuity of Offender Treatment for Substance Use Disorders From Institution to Community.* TIP 30 (1998) NCADI # BKD304.
- *Naltrexone and Alcoholism Treatment.* TIP 28 (1998) NCADI # BKD268.
- *Substance Abuse Among Older Adults.* TIP 26 (1998) NCADI # BKD250.
- *Substance Use Disorder Treatment for People With Physical and Cognitive Disabilities.* TIP 29 (1998) NCADI # BKD288.
- *A Guide to Substance Abuse Services for Primary Care Clinicians.* TIP 24 (1997) NCADI # BKD234.
- *Substance Abuse Treatment and Domestic Violence.* TIP 25 (1997) NCADI # BKD239.
- *Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing.* TIP 23 (1996) NCADI # BKD205.
- *Alcohol and Other Drug Screening of Hospitalized Trauma Patients.* TIP 16 (1995) NCADI # BKD164.
- *Combining Alcohol and Other Drug Abuse Treatment With Diversion for Juveniles in the Justice System.* TIP 21 (1995) NCADI # BKD169.
- *Detoxification From Alcohol and Other Drugs.* TIP 19 (1995) NCADI # BKD172.
- LAAM in the Treatment of Opiate Addiction. TIP 22 (1995) NCADI # BKD170.
- Matching Treatment to Patient Needs in Opioid Substitution Therapy. TIP 20 (1995) NCADI # BKD168.
- Planning for Alcohol and Other Drug Abuse Treatment for Adults in the Criminal Justice System. TIP 17 (1995) NCADI # BKD165.
- Assessment and Treatment of Cocaine-Abusing Methadone-Maintained Patients. TIP 10 (1994) NCADI # BKD157.
- Assessment and Treatment of Patients With Coexisting Mental Illness and Alcohol and Other Drug Abuse. TIP 9 (1994) NCADI # BKD134.
- Intensive Outpatient Treatment for Alcohol and Other Drug Abuse. TIP 8 (1994) NCADI # BKD139.

Other Effective Practice Publications

CSAT Publications—

- Anger Management for Substance Abuse and Mental Health Clients: A Cognitive Behavioral Therapy Manual (2002) NCADI # BKD444.
- Anger Management for Substance Abuse and Mental Health Clients: Participant Workbook (2002) NCADI # BKD445.
- Multidimensional Family Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 5 (2002) NCADI # BKD388.
- Navigating the Pathways: Lessons and Promising Practices in Linking Alcohol and Drug Services with Child Welfare. TAP 27 (2002) NCADI # BKD436.
- The Motivational Enhancement Therapy and Cognitive Behavioral Therapy Supplement: 7 Sessions of Cognitive Behavioral Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 2 (2002) NCADI # BKD385.
- Family Support Network for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 3 (2001) NCADI # BKD386.
- Identifying Substance Abuse Among TANF-Eligible Families. TAP 26 (2001) NCADI # BKD410.
- Motivational Enhancement Therapy and Cognitive Behavioral Therapy for Adolescent Cannabis Users: 5 Sessions. CYT Cannabis Youth Treatment Series Vol. 1 (2001) NCADI # BKD384.
- The Adolescent Community Reinforcement Approach for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 4 (2001) NCADI # BKD387.
- Substance Abuse Treatment for Women Offenders: Guide to Promising Practices. TAP 23 (1999) NCADI # BKD310.
- Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice. TAP 21 (1998) NCADI # BKD246.
- Bringing Excellence to Substance Abuse Services in Rural and Frontier America. TAP 20 (1997) NCADI # BKD220.
- Counselor's Manual for Relapse Prevention with Chemically Dependent Criminal Offenders. TAP 19 (1996) NCADI # BKD723.
- Draft Buprenorphine Curriculum for Physicians (**Note:** The Curriculum is in DRAFT form and is currently being updated) *www.buprenorphine.samhsa.gov.*
- CSAT Guidelines for the Accreditation of Opioid Treatment Programs *www.samhsa.gov/centers/csat/content/dpt/accreditation.htm.*
- Model Policy Guidelines for Opioid Addiction Treatment in the Medical Office *www.samhsa.gov/centers/csat/content/dpt/model_policy.htm.*

NIDA Manuals—Available through NCADI:

- Brief Strategic Family Therapy. Manual 5 (2003) NCADI # BKD481.
- Drug Counseling for Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 4 (2002) NCADI # BKD465.
- The NIDA Community-Based Outreach Model: A Manual to Reduce Risk HIV and Other Blood-Borne Infections in Drug Users. *(2000) NCADI # BKD366.*
- An Individual Counseling Approach to Treat Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. *Manual 3 (1999) NCADI # BKD337.*
- Cognitive-Behavioral Approach: Treating Cocaine Addiction. Manual 1 (1998) NCADI # BKD254.
- Community Reinforcement Plus Vouchers Approach: Treating Cocaine Addiction. Manual 2 (1998) NCADI # BKD255.

NIAAA Publications—* These publications are available in PDF format or can be ordered on-line at *www.niaaa.nih.gov/publications/guides.htm.* An order form for the Project MATCH series is available on-line at *www.niaaa.nih.gov/publications/match.htm.* All publications listed can be ordered through the NIAAA Publications Distribution Center, P.O. Box 10686, Rockville, MD 20849–0686.

- *Alcohol Problems in Intimate Relationships: Identification and Intervention. A Guide for Marriage and Family Therapists (2003) NIH Pub. No. 03–5284.
- * Helping Patients with Alcohol Problems: A Health Practitioner's Guide. (2003) NIH Pub. No. 03–3769.
- Cognitive-Behavioral Coping Skills Therapy Manual. Project MATCH Series, Vol. 3 (1995) NIH Pub. No. 94–3724.
- Motivational Enhancement Therapy Manual. Project MATCH Series, Vol. 2 (1994) NIH Pub. No. 94–3723.

Appendix F—Logic Model Resources

Chen, W.W., Cato, B.M., & Rainford, N. (1998–9). Using a logic model to plan and evaluate a community intervention program:

A case study. International Quarterly of Community Health Education, 18(4), 449–458.

Edwards, E.D., Seaman, J.R., Drews, J., & Edwards, M.E. (1995). A community approach for Native American drug and alcohol prevention programs: A logic model framework. Alcoholism Treatment Quarterly, 13(2), 43–62.

Hernandez, M. & Hodges, S. (2003). Crafting Logic Models for Systems of Care: Ideas into Action. [Making children's mental health services successful series, volume 1]. Tampa, FL: University of South Florida, The Louis de la Parte Florida Mental Health Institute, Department of Child & Family Studies. *http://cfs.fmhi.usf.edu* or phone (813) 974–4651

Hernandez, M. & Hodges, S. (2001). Theory-based accountability. In M. Hernandez & S. Hodges (Eds.), Developing Outcome Strategies in Children's Mental Health, pp. 21–40. Baltimore: Brookes.

Julian, D.A. (1997). Utilization of the logic model as a system level planning and evaluation device. Evaluation and Planning, 20(3), 251–257.

Julian, D.A., Jones, A., & Deyo, D. (1995). Open systems evaluation and the logic model: Program planning and evaluation tools. Evaluation and Program Planning, 18(4), 333–341.

Patton, M.Q. (1997). Utilization-Focused Evaluation (3rd Ed.), pp. 19, 22, 241. Thousand Oaks, CA: Sage.

Wholey, J.S., Hatry, H.P., Newcome, K.E. (Eds.) (1994). Handbook of Practical Program Evaluation. San Francisco, CA: Jossey-Bass Inc.

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–4693 Filed 3–5–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Republication of Standard Service to Science Grants Announcement

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of republication of Standard Service to Science Grants Announcement.

SUMMARY: On November 21, 2003, the Substance Abuse and Mental Health Services Administration published standard grant announcements for Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service to Science Grants. The primary purpose of this republication is to revise the criteria used to screen out applications from peer review. Motivated by the need to assure equitable opportunity and a "level playing field" to all applicants, SAMHSA believes the screening criteria in these announcements will not best serve the public unless revised and republished. This is a republication of the Service to Science Grants announcement. This republication makes those criteria more lenient, permitting a greater number of applications to be reviewed. The revisions to the criteria can be found, in their entirety, in: Section IV, Application and Submission Information; and Appendix A, Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications. Additional references to the criteria elsewhere in the text have been changed to be consistent with the revised criteria in Section IV and Appendix A.

In addition, this republication includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget.

This notice provides the republished text for SAMHSA's standard Service to Science Grants announcement.

DATES: Use of the republished standard Service to Science Grants announcement will be effective March 8, 2004. The standard Service to Science Grants announcement must be used in conjunction with *separate* Notices of Funding Availability (NOFAs) that will provide application due dates and other key dates for specific SAMHSA grant funding opportunities.

ADDRESSES: Questions about SAMHSA's standard Service to Science Grants announcement may be directed to Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland, 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy Friedman, M.A., Office of Policy, Planning and Budget, 5600 Fishers Lane, Room 12C–26, Rockville, Maryland, 20857. Fax: (301–594–6159) E-mail: *cfriedma@samhsa.gov.* Phone: (301) 443–6902.

SUPPLEMENTARY INFORMATION: SAMHSA is republishing its standard Service to Science Grants announcement to make the criteria used to screen out applications from peer review more lenient, permitting a greater number of applications to be reviewed. This republication also includes an additional award criterion in Section V, updated agency contact information in Section VII, and minor technical changes to comply with the formatting requirements for announcement of Federal funding opportunities, as specified by the Office of Management and Budget. The text for the republished standard Service to Science Grants announcement is provided below.

The standard Service to Science Grants announcement will be posted on SAMHSA's web page (*www.samhsa.gov*) and will be available from SAMHSA's clearinghouses on an ongoing basis. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, HIV/AIDS and Substance Abuse Prevention Planning Grants, *etc.*).

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Service-to-Science Grants—STS 04 PA (MOD) (Modified Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *www.grants.gov*)

Key Dates

Application Deadline: This Program Announcement provides instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *www.grants.gov.*

Intergovernmental Review (E.O. 12372): Letters from State Single Point of Contact (SPOC) are due 60 days after application deadline.

Public Health System Impact Statement (PHSIS)/Single State Agency Coordination: Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due 60 days after application deadline.

Table of Contents

I. Funding Opportunity Description

1. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Service-to-Science grants. These grants will document and evaluate innovative practices that address critical substance abuse and mental health service gaps but have not yet been formally evaluated. Applicants who seek to stabilize, document, and evaluate promising practices for mental health and/or substance abuse treatment, prevention, and support services should apply for awards under this announcement.

SAMHSA also funds grants under three other standard grant announcements:

- *Services Grants* provide funding to implement substance abuse and mental health services.
- *Infrastructure Grants* support identification and implementation of systems changes but are not designed to fund services.
- *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.

This announcement describes the general program design and provides application instructions for all SAMHSA Service-to-Science Grants. The availability of funds for specific Service-to-Science Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *www.grants.gov*—the Federal grant announcement web page.

SAMHSA's Service-to-Science Grants are authorized under Section 509, 516 and/or 520A of the Public Health Service Act, unless otherwise specified in a NOFA in the **Federal Register** and on *www.grants.gov*.

Typically, funding for Service-to-Science Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, award size, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

2. Expectations

While there is a well-established evidence base for many behavioral health practices, critical service gaps exist for which there is no formal evidence base. Stakeholders have developed many innovative practices to fill these gaps, but they may lack the expertise and/or resources to formally document and evaluate their practices. Consequently, it is not clear whether these innovative practices are effective, and they are not disseminated widely. SAMHSA seeks to encourage continued development of evidence-based practices to fill service gaps by documenting and evaluating promising stakeholder-initiated practices. This program will help organizations that have identified promising new practices to evaluate and package those innovations for review and inclusion in the National Registry of Effective Programs (NREP) as well as for further research.

2.1 Program Design

SAMHSA will fund Service-to-Science grants in two phases. You may apply for Phase I and II combined or for Phase II alone. Applications for Phase I alone will not be accepted.

Phase I provides support for up to 2 years to stabilize and document an existing practice that fills an identified gap. During Phase I, you may:

- Further develop or refine the promising practice;
- Develop training and practice manuals;
- Train persons who are implementing the practice;
- More systematically implement the practice;
- Develop measurement instruments; and
- Ensure that the intended target population (see Glossary) is being reached by the practice.

The desired endpoint of Phase I is readiness to conduct a high-quality, systematic evaluation.

Phase II provides support for 1–3 years to evaluate the success of the practice. The purpose of Phase II is to conduct a high-quality, systematic evaluation to document short-term outcomes and demonstrate that the practice is worthy of an experimental study. On the basis of the evaluation, you may need to further refine the practice and further refine the practice manual. The evaluation may use a pre-post approach, an open trial model, other quasi or non-experimental model, or an experimental model.

The desired endpoint for Phase II is readiness to submit the practice for inclusion in SAMHSA's NREP and/or to submit applications to various research institutions for additional research.

SAMHSA's Service-to-Science grants will provide support to stabilize practices so that they may be documented and evaluated. However, these grants are not intended to support development of entirely new practices. The practices must be in place and operational for at least one year prior to application, and you must have at least anecdotal evidence that the practice is effective.

You may apply for a combination of Phases I and II in a single grant application if you have identified a priority gap for which a fully developed and documented practice currently does not exist.

- During Phase I, you will further develop and document the practice.
- During Phase II, you will evaluate the practice.

At the conclusion of Phase I, SAMHSA staff will review your progress to determine whether Phase II is warranted. This decision will be based on review of the documentation required by the end of Phase I, as described under the Performance Expectations section below. You must provide compelling evidence that the practice has been sufficiently developed and documented to be evaluated and has produced positive results.

For practices that are already fully developed, implemented, stabilized, and documented but that have not yet

been formally evaluated, you may apply for Phase II only. Applications for Phase I alone will not be accepted.

Depending on your readiness, you may receive a combination of Phases I and II for a period of up to, but not more than, 5 years. You may apply for a shorter grant period than the maximum, and SAMHSA may award a grant for a shorter time period than you request.

2.2 Establishing Need

Service-to-Science grants are intended to develop solutions to widespread needs. This grant program is not intended to address a local community's need for funds to solve a local problem. Therefore, you must demonstrate that the broader substance abuse and/or mental health field—not just your local community—has a need for the practice. You must also show that no well-documented solution to the problem exists, and that your local community can support an evaluation that will increase the knowledge base of the field.

2.3 Allowable Activities

Phase I: Practice Development and Documentation

In Phase I, you will further develop and document the practice. The types of activities that may be needed and that are allowable include, but are not limited to, the following:

- Strategic planning
- Convening stakeholder meetings
- Training of practitioners
- Efforts to overcome policy and funding barriers to practice stability
- Development of an action plan for systematizing and stabilizing the practice
- Development of a practice support system
- Developing needed partnerships for ongoing implementation
- Logic model development
- Documentation of core elements of the practice
- Practice manual development
- Measurement instrument development/selection
- Participant recruitment
- Development of quality assurance and accountability mechanisms
- Implementation and refinement of the practice
- Implementation process evaluation
- Management information system development
- Collection of pilot outcome data

Phase II: Practice Evaluation

During Phase II, SAMHSA will (if necessary) continue to fund implementation of the practice being evaluated. Other types of allowable activities include, but are not limited to, the following:

- Convening relevant stakeholder meetings
- Alignment of management information systems with data collection needs
- Training evaluators
- Measurement instrument development/selection
- Data collection
- Database management
- Data and cost analysis
- Dissemination of results
- Refinement of logic model and practice manual based on evaluation results

2.4 Performance Expectations

All grantees will be expected to meet the following performance requirements by the end of their grant projects.

Phase I

By the end of Phase I, documentation for the practice must include:

- A logic model depicting the principles and concepts underlying the practice.
- A manual describing the practice in detail that would allow others to replicate the practice.
- Documentation of how critical stakeholders were included in the development of the practice.
- A detailed description of the population that the practice is designed to serve, and demographic characteristics of the people served by the practice over the past year.
- Documentation that the number of people being served by the practice has been stabilized.
- Documentation of the number and percentage of staff trained in the practice, and a mechanism for ongoing training for any new staff.
- A process evaluation demonstrating that the practice is in full operation and that a routine service delivery process is in place.
- Pilot outcome results. (**Note:** Collection of these data need not include an extensive set of outcomes systematically collected on all participants, but quantitative project data should provide some indication that key outcomes are being achieved.)

Phase II

By the end of Phase II, the evaluation of the practice must have demonstrated that:

- Key outcome measures have been clearly identified and defined.
- Participant data collection systems are in place that include:
  - Demographic characteristics
  - Practice outcomes
  - Service utilization
  - Service delivery costs
  - Satisfaction with services
- Demographic characteristics of participants, as well as the types of services that participants have received, are consistent with expectations based on the logic model for the practice.
- Service delivery patterns are stable.
- A fidelity scale has been developed for assessing the integrity of the practice, and the practice has been implemented with fidelity according to the scale.
- Systematically collected short-term outcome measures indicate meaningful results.
- Consumers, family members, and other critical stakeholders are satisfied with the practice.

In addition, at the end of Phase II, grantees must:

- Demonstrate how consumers, family members, and other critical stakeholders participated in the evaluation of the practice.
- Demonstrate how the practice will be sustained over the 5 years following the end of the grant period.
- As appropriate, submit the practice to the SAMHSA National Registry of Effective Programs (NREP).
- Demonstrate the willingness of those who initiated the practice to participate in rigorous research over the next 5 years (*e.g.*, through submission of grant applications to the National Institutes of Health, private foundations, or other research funding sources; through formal agreements between practice initiators and researchers; *etc.*)

2.5 Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to set program performance targets and report annually on the degree to which the previous year's targets were met.

Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures and justify requests for funding.

To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. Grantees are required to report these GPRA data to SAMHSA on a timely basis.

Specifically, grantees will be required to provide data on a set of required measures, as specified in the NOFA. The data collection tools to be used for reporting the required data will be provided in the application kits distributed by SAMHSA's clearinghouses and posted on

SAMHSA's Web site along with each NOFA. In your application, you must demonstrate your ability to collect and report on these measures, and you may be required to provide some baseline data.

The terms and conditions of the grant award also will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

Applicants should be aware that SAMHSA is working to develop a set of required core performance measures for each of SAMHSA's standard grants (*i.e.*, Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). As this effort proceeds, some of the data collection and reporting requirements included in SAMHSA's NOFAs may change. All grantees will be expected to comply with any changes in data collection requirements that occur during the grantee's project period.

2.6 Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

II. Award Information

1. Award Amount

The NOFA will specify the expected award amount for each funding opportunity. Regardless of the amount specified in the NOFA, the actual award amount will depend on the availability of funds.

You may apply for either a combined Phase I & II grant or for a Phase II only grant.

- Awards for Phase I of the combined grants are for up to $150,000 (direct and indirect costs) per year for up to 2 years.
- Awards for Phase II are $300,000–$500,000 (direct and indirect costs) per year for 1–3 years.
- Awards for combined Phase I and II grants may not exceed 5 years.

Phase II funding will be approved only if you provide compelling evidence that the practice has been sufficiently developed and documented to be evaluated and has produced positive results.

Proposed budgets cannot exceed the allowable amount as specified in the NOFA in any year of the proposed project. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

SUMMARY TABLE

Phase	Activity focus	Years of support	Application requirement	Funding level (direct and indirect costs)
I	Practice Development and Documentation.	0–2	Optional	Up to $150,000 per year.
II	Practice Evaluation	1–3	Required	$300,000–$500,000 per year.
	Total	1–5		

2. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (see the Glossary in Appendix B for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are domestic public and private nonprofit entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

Though not required, SAMHSA encourages community-based providers and independent researchers to partner when applying for Service-to-Science grants. Such partnerships will use the expertise of each partner to ensure sound service delivery, high-quality evaluation, independent results, and relevance of the evaluation design to service delivery outcomes.

2. Cost Sharing

Cost sharing (see Glossary) is not required in this program, and applications will not be screened out on the basis of cost sharing. However, you may include cash or in-kind (see Glossary) contributions in your proposal as evidence of commitment to the proposed project.

3. Other

Applications must comply with the following requirements, or they will be screened out and will not be reviewed: Use of the PHS 5161–1 application; application submission requirements in Section IV–3 of this document; and formatting requirements provided in Section IV–2.3 of this document. Applicants should be aware that the NOFA may include additional requirements that, if not met, will result in applications being screened out and returned without review. These requirements will be specified in Section III–3 of the NOFA.

You also must comply with any additional program requirements specified in the NOFA, such as the required signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix A of this document.)

1. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

- For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

• You also may download the required documents from the SAMHSA Web site at *www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this web site include:

• A technical assistance manual for potential applicants;

• Standard terms and conditions for SAMHSA grants;

• Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and

• Enhanced instructions for completing the PHS 5161–1 application.

2. Content and Form of Application Submission

2.1 Required Documents

SAMHSA application kits include the following documents:

• PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1 unless otherwise specified in the NOFA. Applications that are not submitted on the required application form will be screened out and will not be reviewed.

• Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.

• Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register** as well as on the Federal grants web site (*www.grants.gov*).

You must use all of the above documents in completing your application.

2.2 Required Application Components

To ensure equitable treatment of all applications, applications must be complete. In order for your application to be complete, it must include the required ten application components (Face Page, Abstract; Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist).

—Face Page—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet web site at *www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]

—Abstract—Your total abstract should be no longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

—Table of Contents—Include page numbers for each of the major sections of your application and for each appendix.

—Budget Form—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.

—Project Narrative and Supporting Documentation—The Project Narrative describes your project. It consists of Sections A through D. These sections in total may be no longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through H. There are no page limits for these sections, except for Section G, the Biographical Sketches/Job Descriptions.

• Section E—Literature Citations. This section must contain complete citations, including titles and all authors, for any literature you cite in your application.

• Section F—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project.

• Section G—Biographical Sketches and Job Descriptions.

• Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

• Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

• Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• Section H—Confidentiality and SAMHSA Participant Protection/Human Subjects. Section IV–2.4 of this document describes requirements for the protection of the confidentiality, rights and safety of participants in SAMHSA-funded activities. This section also includes guidelines for completing this part of your application.

—Appendices 1 through 5—Use only the appendices listed below. Do not use more than 30 pages for Appendices 1, 4, and 5. There are no page limitations for Appendices 2 and 3. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

• Appendix 1: Letters of Support.

• Appendix 2: Documentation of the Practice (Phase II only applicants).

• Appendix 3: Data Collection Instruments/Interview Protocols.

• Appendix 4: Sample Consent Forms.

• Appendix 5: Letter to the SSA (if applicable; see Section IV–4 of this document).

—Assurances—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1. Some applicants will be required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations Form SMA 170. If this assurance applies to a specific funding opportunity, it will be posted on SAMHSA's web site with the NOFA and provided in the application kits available at SAMHSA's clearinghouse (NCADI).

—Certifications—Use the "Certifications" forms found in PHS 5161–1.

—Disclosure of Lobbying Activities—Use form SF LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

—Checklist—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

2.3 Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the 25-page limit for the Project Narrative.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by 25. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The 30-page limit for Appendices 1, 4 and 5 cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, following these guidelines will help reviewers to consider your application.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in Section IV–6.1 of this document. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD-ROMs.

2.4 Confidentiality and Human Subjects Protection

Applicants must describe procedures relating to Confidentiality and the Protection of Human Subjects Regulations in Section H of the application, using the guidelines provided below. Problems with confidentiality and protection of human subjects identified during peer review of the application may result in the delay of funding.

Confidentiality and Participant Protection

All applicants *must* describe how they will address the requirements for each of the following elements relating to confidentiality and participant protection.

1. *Protect Clients and Staff from Potential Risks:*

• Identify and describe any foreseeable physical, medical, psychological, social, and legal risks or potential adverse effects as a result of the project itself or any data collection activity.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide guidance and assistance in the event there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. *Fair Selection of Participants:*

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other targeted groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, and individuals who are likely to be particularly vulnerable to HIV/AIDS.

• Explain the reasons for including or excluding participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. *Absence of Coercion:*

• Explain if participation in the project is voluntary or required. Identify possible reasons why participation is required, for example, court orders requiring people to participate in a program.

• If you plan to compensate participants, state how participants will be awarded incentives (*e.g.*, money, gifts, *etc.*).

• State how volunteer participants will be told that they may receive services intervention even if they do not participate in or complete the data collection component of the project.

4. *Data Collection:*

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 3: Data Collection Instruments/Interview Protocols, copies of all available data collection instruments and interview protocols that you plan to use.

5. *Privacy and Confidentiality:*

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example,

through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. *Adequate Consent Procedures:*

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used, and how you will keep the data private.

• State:

• Whether or not their participation is voluntary.

• Their right to leave the project at any time without problems.

• Possible risks from participation in the project.

• Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must obtain written informed consent.

• Indicate if you will obtain informed consent from participants or assent from minors along with consent from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include, as appropriate, sample consent forms that provide for: (1) Informed consent for participation in service intervention; (2) informed consent for participation in the data collection component of the project; and (3) informed consent for the exchange (releasing or requesting) of confidential information. The sample forms must be included in Appendix 4, "Sample Consent Forms", of your application. If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. *Risk/Benefit Discussion:*

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

All applicants for Service-to-Science grants must comply with the Protection of Human Subjects Regulations (45 CFR part 46).

Applicants must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, you will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any participants in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov.* You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

3. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be published in the NOFAs in the **Federal Register** and posted on the Federal grants web site (*www.grants.gov*).

Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

4. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) web site at *www.whitehouse.gov/omb/grants/spoc.html.*

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline:

Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, Attn: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

In addition, community-based, non-governmental service providers who are not transmitting their applications through the State must submit a Public Health System Impact Statement (PHSIS) (approved by OMB under control no. 0920–0428; see burden statement below) to the head(s) of appropriate State or local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. The PHSIS is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to these requirements.

The PHSIS consists of the following information:

• A copy of the face page of the application (SF 424); and

• A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's web site at *www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA must include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, Attn: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, Attn: PRA (0920–0428).]

5. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

- Institutions of Higher Education: OMB Circular A–21
- State and Local Governments: OMB Circular A–87
- Nonprofit Organizations: OMB Circular A–122
- Appendix E Hospitals: 45 CFR Part 74

In addition, SAMHSA Service-to-Science grant funds may not be used to:

- Pay for any lease beyond the project period.
- Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).
- Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request up to $75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
- Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
- Pay for housing other than residential mental health and/or substance abuse treatment.
- Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
- Pay for incentives to induce clients to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, childcare, and vouchers) to clients as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
- Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.
- Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STDs)/sexually transmitted illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.

6. Other Submission Requirements

6.1 Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

6.2 How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

1. Evaluation Criteria

Your application will be reviewed and scored according to the quality of your response to the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
- Reviewers will be looking for evidence of cultural competence in each section of the Project Narrative. Points will be assigned based on how well you address the cultural competence aspects of the evaluation criteria. SAMHSA's guidelines for cultural competence can be found on the SAMHSA web site at *www.samhsa.gov*. Click on "Grant Opportunities."
- The Supporting Documentation you provide in Sections E–H and Appendices 1 through 5 will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Statement of Need (15 Points)

- Describe the problem the project will address. Describe the national significance of the problem. Documentation of need may come from a variety of qualitative and quantitative sources in the professional literature. The quantitative data could also come from national data available regarding mental health and substance use needs, gaps, and priorities. For example:
- Applications focusing on substance abuse might draw from SAMHSA's National Household Survey on Drug Use

and Health (NHSDUH); Drug Abuse Warning Network (DAWN); and Drug and Alcohol Services Information System (DASIS), which includes the Treatment Episode Data Set (TEDS).

• Applications focusing on mental health might draw on data available from the National Association of State Mental Health Program Directors (NASMHPD), SAMHSA (*www.samhsa.gov/cmhs/MentalHealthStatistics*), or other sources.

Qualitative sources may also include conclusions of conferences and events of national significance.

• Describe the target population for the practice, including demographic information. Discuss the target population's language, beliefs, norms and values, as well as socioeconomic factors that must be considered in delivering programs to this population

• Review the literature that demonstrates a need to develop or adapt an effective practice for the target population. Demonstrate through the literature review that current evidence-based approaches to the problem do not exist or have not been evaluated for the specific target populations, or that approaches of greater clinical or cost effectiveness are needed.

• Demonstrate that the need in the community in which the project will be carried out is of sufficient magnitude that an adequate evaluation of the practice can be conducted. To the extent possible, use locally generated data or State data such as that available through State needs assessments.

• Check the NOFA for any additional requirements.

Section B: Proposed Approach (30 Points)

• Describe the practice proposed for evaluation. Document that the practice has been in place and operational for at least one year prior to the application due date.

• Describe how the proposed practice will respond to the needs described in Section A of your Project Narrative.

• Discuss the potential effectiveness of the practice proposed for evaluation. Why has this practice been selected? Present the theoretical underpinnings, core principles, and major assumptions of the proposed practice. Outline the key operational elements of the practice and summarize any relevant literature.

• Identify any necessary collaborators on the project, including their roles and responsibilities. Demonstrate their commitment to the project. Include letters of support in Appendix 1: Letters of Support. Identify any cash or in-kind contributions that will be made to the project by the applicant or other partnering organizations.

• Describe your experience with similar collaborative projects, and explain why you believe you will be able to sustain this collaboration throughout the project period.

• If applying for combined Phase I and II, describe the extent to which the practice has been previously developed, implemented, stabilized, and documented. Include a description of the extent to which the support system needed for full implementation of the proposed practice is in place—*e.g.*, community collaboration and consensus building; alignment of management information systems, policies, and funding mechanisms; documentation of core elements of the practice; reliable recruitment and intake procedures; quality assurance and accountability mechanisms; training and overall readiness of those implementing the practice; and involvement of families and consumers in the project.

• If applying for Phase II only, show that the practice is ready for systematic evaluation by providing documentation, in Appendix 2, that includes all of the following:

• A logic model depicting the principles and concepts underlying the practice.

• A copy of the Title Page and Table of Contents for a manual describing the practice in detail that would allow others to replicate the practice, and details on how the manual can be acquired.

• Documentation of how critical stakeholders were included in the development of the practice.

• A detailed description of the population that the practice is designed to serve, and demographic characteristics of the people served by the practice over the past year.

• Demonstration of stability in the number of people being served by the practice.

• Documentation that staff are trained in the practice (via the number and percentage of staff trained), and a mechanism for ongoing training for any new staff.

• Evidence demonstrating that the practice is in full operation and that a routine service delivery process is in place.

• Pilot outcome results. (**Note:** Collection of these data need not include an extensive set of outcomes systematically collected on all participants, but quantitative project data should provide some indication that key outcomes are being achieved.)

• Present the goals and measurable objectives of the project. Describe why the practice can better be evaluated for effectiveness following completion of the grant activities. For applications that include Phase I, include in your description how achievement of your goals will fulfill the Performance Expectations cited in Section I–2 of this document.

• Describe the action steps to accomplish the goals and objectives. Demonstrate that the action steps will lead to successful accomplishment of the goals and objectives.

• Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.

• Describe how the proposed project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.

• Check the NOFA for any additional requirements.

Section C: Evaluation Design and Analysis (40 Points)

• Describe in detail your evaluation design for determining the effectiveness of the practice. For applications that include Phase I, describe your process evaluation to determine that the practice is in full operation, as well as how you will track the number and percentage of staff fully trained in the practice.

• Describe the process and outcome evaluation protocols you intend to use. Include in Appendix 3 evaluation instruments to be used. Describe any literature or pilot testing done to verify the validity and reliability of the instruments to be used or how you plan to develop the instruments during the grant period.

• Discuss the reliability and validity of evaluation methods and instrument(s) in terms of the gender/age/culture of the target population.

• Describe how you will develop and manage a database management system to record participant demographic characteristics, practice outcomes, service utilization, practice costs, and satisfaction of stakeholders with the practice.

• Describe how the integrity of the practice will be assessed using a fidelity (see Glossary) scale. If no fidelity scale currently exists for the practice, describe the process by which you will develop one during the grant period. Describe how you will document and assess changes to the model that occur throughout the project.

• Document your ability to collect and report on the required performance measures as specified in the NOFA, including data required by SAMHSA to meet GPRA requirements. Specify and

justify any additional measures you plan to use for your grant project.

• Describe how you will analyze the data collected. Include any analyses that will be done to determine the effectiveness of the practice for diverse subgroups, as well as the satisfaction of various stakeholder groups with the practice.

• Describe how your process evaluation will document the role of critical stakeholders in the development and/or evaluation of the practice.

• Check the NOFA for any additional requirements.

Section D: Management Plan and Staffing (15 Points)

• Provide a realistic time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The time line should be part of the Project Narrative. It should not be placed in an appendix.]

• Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.

• Provide a list of staff members who will conduct the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, such as evaluators and database management personnel.

• Describe the racial/ethnic characteristics of key staff and indicate if any are members of the target population/community. If the target population is multi-linguistic, indicate if the staffing pattern includes bilingual and bicultural individuals.

• If you plan to include an advisory body in your project, describe its membership, roles and functions, and frequency of meetings.

• Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that resources are adequate for conducting a high-quality evaluation of the identified practice.

• Check the NOFA for any additional requirements.

Note: Although the budget for the proposed project is not a review criterion, the review group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

2. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

Decisions to fund a grant are based on:

• The strengths and weaknesses of the application as identified by the peer review committee and approved by the appropriate National Advisory Council;

• Availability of funds; and

• After applying the aforementioned criteria, the following method for breaking ties: When funds are not available to fund all applications with identical scores, SAMHSA will make award decisions based on the application(s) that received the greatest number of points by peer reviewers on the evaluation criterion in Section V–1 with the highest number of possible points (Evaluation Design and Analysis—40 points). Should a tie still exist, the evaluation criterion with the next highest possible point value will be used, continuing sequentially to the evaluation criterion with the lowest possible point value, should that be necessary to break all ties. If an evaluation criterion to be used for this purpose has the same number of possible points as another evaluation criterion, the criterion listed first in Section V–1 will be used first.

VI. Award Administration Information

1. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

2. Administrative and National Policy Requirements

• You must comply with terms and conditions of the grant award. Standard SAMHSA terms and conditions are available on SAMHSA's web site at *www.samhsa.gov/grants/2004/useful_info.asp.*

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

• Actions required to be in compliance with human subjects requirements;

• Requirements relating to additional data collection and reporting;

• Requirements relating to participation in a cross-site evaluation; or

• Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

3. Reporting Requirements

3.1 Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that treatment or prevention service efforts are sustained, your financial reports should explain plans to ensure the sustainability (see Glossary) of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

3.2 Government Performance and Results Act (GPRA)

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. To meet the GPRA requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. These requirements will be specified in the NOFA for each funding opportunity.

3.3 Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact:

Gwendolyn Simpson (CMHS), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 12–103, Rockville, MD 20857, (301) 443–4456, *gsimpson@samhsa.gov.*

Edna Frazier (CSAP), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–6816, *efrazier@samhsa.gov.*

Kathleen Sample (CSAT), Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857, (301) 443–9667, *ksample@samhsa.gov.*

Appendix A—Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. If you do not adhere to these requirements, your application will be screened out and returned to you without review. In addition to these formatting requirements, programmatic requirements (*e.g.*, relating to eligibility) may be stated in the specific NOFA and in Section III of the standard grant announcement. Please check the entire NOFA and Section III of the standard grant announcement before preparing your application.

—Use the PHS 5161–1 application.

—Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

—Information provided must be sufficient for review.

—Text must be legible.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Text in the Project Narrative cannot exceed 6 lines per vertical inch.

—Paper must be white paper and 8.5 inches by 11.0 inches in size.

—To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

• Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the specific funding announcement.

• Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.

• Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

—The page limit for Appendices stated in the specific funding announcement cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

—The 10 application components required for SAMHSA applications should be included. These are:

- Face Page (Standard Form 424, which is in PHS 5161–1)
- Abstract
- Table of Contents
- Budget Form (Standard Form 424A, which is in PHS 5161–1)
- Project Narrative and Supporting Documentation
- Appendices
- Assurances (Standard Form 424B, which is in PHS 5161–1)
- Certifications (a form in PHS 5161–1)
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
- Checklist (a form in PHS 5161–1)

—Applications should comply with the following requirements:

• Provisions relating to confidentiality, participant protection and the protection of human subjects specified in Section IV–2.4 of the FY 2004 standard funding announcements.

• Budgetary limitations as specified in Section I, II, and IV–5 of the FY 2004 standard funding announcements.

• Documentation of nonprofit status as required in the PHS 5161–1.

—Pages should be typed single-spaced with one column per page.

—Pages should not have printing on both sides.

—Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

—Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper or any material that cannot be copied

using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix B—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available regarding effectiveness and acceptability.

Catchment Area: A catchment area is the geographic area from which the target population to be served by a program will be drawn.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost Sharing or Matching: Cost sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost sharing or matching is not required, and applications will not be screened out on the basis of cost sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Fidelity: Fidelity is the degree to which a specific implementation of a program or practice resembles, adheres to, or is faithful to the evidence-based model on which it is based. Fidelity is formally assessed using rating scales of the major elements of the evidence-based model. A toolkit on how to develop and use fidelity instruments is available from the SAMHSA-funded Evaluation Technical Assistance Center at *http://tecathsri.org* or by calling (617) 876–0426.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Logic Model: A logic model is a diagrammatic representation of a theoretical framework. A logic model describes the logical linkages among program resources, conditions, strategies, short-term outcomes, and long-term impact. More information on how to develop logics models and examples can be found through the resources listed in Appendix C.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Sustainability: Sustainability is the ability to continue a program or practice after SAMHSA grant funding has ended.

Target Population: The target population is the specific population of people whom a particular program or practice is designed to serve or reach.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix C—Logic Model Resources

Chen, W.W., Cato, B.M., & Rainford, N. (1998–9). Using a logic model to plan and evaluate a community intervention program: A case study. International Quarterly of Community Health Education, 18(4), 449–458.

Edwards, E.D., Seaman, J.R., Drews, J., & Edwards, M.E. (1995). A community approach for Native American drug and alcohol prevention programs: A logic model framework. Alcoholism Treatment Quarterly, 13(2), 43–62.

Hernandez, M. & Hodges, S. (2003). Crafting Logic Models for Systems of Care: Ideas into Action. [Making children's mental health services successful series, volume 1]. Tampa, FL: University of South Florida, The Louis de la Parte Florida Mental Health Institute, Department of Child & Family Studies. *http://cfs.fmhi.usf.edu* or phone (813) 974–4651.

Hernandez, M. & Hodges, S. (2001). Theory-based accountability. In M. Hernandez & S. Hodges (Eds.), Developing Outcome Strategies in Children's Mental Health, pp. 21–40. Baltimore: Brookes.

Julian, D.A. (1997). Utilization of the logic model as a system level planning and evaluation device. Evaluation and Planning, 20(3), 251–257.

Julian, D.A., Jones, A., & Deyo, D. (1995). Open systems evaluation and the logic model: Program planning and evaluation tools. Evaluation and Program Planning, 18(4), 333–341.

Patton, M.Q. (1997). Utilization-Focused Evaluation (3rd Ed.), pp. 19, 22, 241. Thousand Oaks, CA: Sage.

Wholey, J.S., Hatry, H.P., Newcome, K.E. (Eds.) (1994). Handbook of Practical Program Evaluation. San Francisco, CA: Jossey-Bass Inc.

Dated: February 26, 2004.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

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Federal Register

Monday,
March 8, 2004

Part III

Department of the Interior

National Environmental Policy Act Revised Implementing Procedures; Notice

DEPARTMENT OF THE INTERIOR

[516 DM 1–15]

National Environmental Policy Act Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of final revised procedures.

SUMMARY: This notice contains the final revised Departmental policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended, Executive Order 11514, as amended, and the Council on Environmental Quality's (CEQ) regulations. This action is necessary to update these procedures and to make them available to the public on the Department's Internet site. These procedures are final and will be published in part 516 of the Departmental Manual (DM) and will be made available to the public on the Electronic Library of Interior Policies (ELIPS). ELIPS is located at *http://elips.doi.gov/*. The bureaus and offices of the Department of the Interior are required to use these procedures when meeting their responsibilities under the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Terence N. Martin, Team Leader, Natural Resources Management; Office of Environmental Policy and Compliance; 1849 C Street, NW.; Washington, DC 20240. Telephone: 202–208–5465. E-mail: *terry_martin@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: *General:* These procedures address policy as well as procedure in order to assure compliance with the spirit and intent of NEPA. They update Interior's policies and procedures in order to stay current with changing environmental laws and programs of the Federal government. It is the intent of these procedures to provide one set of broad Departmental directives and instructions to all bureaus and offices of the Department to follow in their NEPA compliance activities. In previous publications of these chapters the Department's bureaus published appendices to chapter 6 to further describe each bureau's compliance program. In order to more efficiently handle these appendices in the ELIPS system, it has been decided to republish them as new chapters to this DM part. Therefore, new chapters 8 through 15 which represent the currently existing bureau appendices will be added to the Departmental Manual. These chapters have already received public review, are final, and are not being republished here today. In the near future, each bureau will consider revising its chapter to bring it into conformance with the Department's procedures. Any revisions to these chapters will be published in the **Federal Register** for public comment. In accordance with 1507.3 of the CEQ Regulations, this Department submitted these final revisions to CEQ for their review and approval. In a letter, CEQ approved these procedures for final publication. The remaining sections of **SUPPLEMENTARY INFORMATION** will provide background, a synopsis of comments and responses, and procedural requirements. Following the **SUPPLEMENTARY INFORMATION** is the text of the final procedures.

Background: On September 4, 2003, the Department published these procedures in draft form and invited the public to make comments. All comments received to date on this publication have been read, analyzed, and considered in the revision process. The procedures have also been circulated in the Department for final clearance by each assistant secretary. In some cases, responses to public comments or changes made as a result of public comments have been further revised during the final, internal review and clearance process.

Comments and Responses: The Department received, reviewed, and considered seventeen letters of comment on the September 4, 2003, **Federal Register** notice. There were some comments which focused on certain broad issues, and those comments are addressed immediately below. We have identified these issues with portions of the publication or with a descriptive title. These titles are in all capital letters for easy identification. Following these responses, we have incorporated the outline of each chapter of the final publication for ease of tracking individual comments on specific sections. To find your comment, you should proceed to the section of the manual that you commented on to see the response. For example, if you made a comment in Chapter 3, subpart 4, proceed to the heading 516 DM 3 and find 3.4. In each subpart where there are comments, we have paraphrased the comments in italics followed immediately by our response in regular type. If several reviewers made comments on the same section and a single answer is warranted, it is identified as an answer to multiple comments. If a chapter subpart is not listed, there were no comments received on that subpart.

Supplementary Information Portion of the September 4, 2003, Publication

In the **SUPPLEMENTARY INFORMATION** section of the September 4, 2003, **Federal Register** notice, we made the statement that:

They update our policies and procedures in order to stay current with changing environmental laws and programs of the Federal government.

Several reviewers were concerned that this statement needed more clarification and seemed to apply a more formal reading of the statement than did the Department.

We intended the statement in a casual manner since, over the last twenty three years, there have been a number of new and modified environmental requirements at all levels of government. We wish to assure all reviewers that this sentence is only a summary expression reflecting the intent of the revision to take into account the past twenty three years of changing environmental requirements. These Departmental procedures originated in 1980 and have become dated both in reference to and substantive compliance with newer requirements. Agencies often revise their procedures for this reason. Also, the CEQ Regulations require agencies to review their procedures [40 CFR 1507.3(a)]. In addition, the Department has been posting sections of its operating manual on the Internet for easy public access. Before these chapters can be posted, they must be revised to be useful to our bureaus and the public.

Several reviewers expressed concern that the September 4, 2003, **Federal Register** notice did not explain all of the changes or did not provide explicit, highlighted changes.

We believe that we did provide sufficient explanation of the material presented, and we cited the Internet location of the current procedures so that anyone wishing to download them and make their own comparisons could do so. Further, a contact was given for any questions from the public. Any requests for a paper copy of the current chapters would have been honored. No such requests were received.

Several reviewers noted our citation of Executive Order 13212 in the supplemental information and expressed concern that this represented a particular emphasis on expediting energy projects and that the reference to 516 DM 4.16 was incorrect.

This portion of the **SUPPLEMENTARY INFORMATION** was merely intended to display the various procedural requirements that this publication

would have had to address had it been a rulemaking. There was no intention to indicate any emphasis on the application of Executive Order 13212 over any other requirement that applies to the Department. The reference to 516 DM 4.16 was an error in publication, and it should have been 516 DM 4.17 as the reviewer noted. It has been changed in this version.

Relationship of these revised departmental NEPA procedures to current NEPA compliance and Federal financial assistance program activities of the Department's Fish and Wildlife Service.

Several reviewers remain concerned about this publication and its perceived increase in workload under the Federal financial assistance programs of the Fish and Wildlife Service (FWS). The concerns are: (1) Federal aid program activities will be subject to an increasing amount of environmental assessments when categorical exclusions should be able to provide adequate NEPA compliance, (2) EAs should only be used to determine if an EIS is necessary under Federal aid grant programs, (3) Federal aid grants for maintenance work often receive more environmental analysis than is warranted because Federal managers return to the base project for their NEPA analysis when only the maintenance activity should be examined, and (4) Certain additions to Appendix 1—containing the Department's categorical exclusions (CXs) need to be made to further the use of CXs in Federal aid programs.

We appreciate the comments that have been made in this area and have reviewed them for any possible changes to the Departmental Manual. However, these comments and recommendations are the concern of and better answered by the Department's Fish and Wildlife Service. The Departmental NEPA procedures serve as umbrella procedures for all of the bureaus in the Department and do not provide a level of detail sufficient to apply to all the bureaus and their varied mandates, missions, and needs.

The FWS NEPA procedures in the Departmental Manual, which address the requirements set forth in 516 DM 6.5, were last published as final procedures on January 16, 1997. All public comments were considered and were incorporated into the final FWS procedures. The FWS will be reviewing and revising as necessary its NEPA guidance following final publication of the Departmental Manual.

Since these comments and recommendations are concerned with the program activities of the Fish and Wildlife Service, they have been forwarded to that bureau for their use in any future revision of Chapter 8.

One reviewer expressed concern that the department's procedures should await the completion of CEQ's guidance arising from the CEQ task force report on moderizing NEPA implementation.

During development of the September 4, 2003, publication, the Department was in contact with CEQ staff concerning the new concepts and changes that were being written into the manual chapters. CEQ made suggestions for improvement and generally indicated that the Department's changes were consistent with the information being collected for their report, "Modernizing NEPA Implementation." We believe that it is unnecessary to wait for CEQ to complete any new guidance arising from the report recommendations since the Department maintains its own guidance system to further explain or interpret new guidance from CEQ or elsewhere. Reviewers are referred to our environmental statement memorandum series at *http://www.doi.gov/oepc/ememoranda.html.*

One reviewer was concerned with the chapter 1 references to the department and its officers interpreting and administering the policies, regulations, and public laws of the United States in accordance with NEPA.

We do not believe there is a problem with this language since it is consistent with section 102(1) of NEPA.

One reviewer pointed out that states have public participation processes that may be duplicated by the department and create confusion.

The reviewer indicated that the Department should accept State public participation processes as adequate and move toward use of cooperative agreements to further the Federal/State roles in producing NEPA compliance documents. We agree in general and understand that several States have adequate public participation programs. The CEQ Regulations at 40 CFR 1506.6 require the Department to provide for public involvement and this has been a cornerstone of the Department's NEPA procedures for many years. To address this comment, we have allowed for public involvement to be accomplished through local partnerships in 516 DM 1.2B.

One reviewer commented that DOI should hold its employees fully accountable for their actions when carrying out their responsibilities during consensus-based management. The reference was to our statement concerning Executive Order 12630 in the procedural requirements below.

We appreciate the comment and can assure reviewers that Departmental employees are fully bound by these procedures and Executive Order 12630 and are expected to carry out their responsibilities accordingly.

Several reviewers offered comments on the Bureau of Land Management's willingness to comply fully with the policy statements of 516 DM 1.

All bureaus of the Department are bound by these procedures as well as their NEPA procedures set out in their chapters and handbooks. BLM has participated vigorously in the development of the Department's new procedures and plans to move rapidly toward updating its chapter and handbook to conform to the new Departmental procedures. We have forwarded these specific comments to the bureau for its information and consideration in their revision efforts.

Several reviewers commented that Federal permitting processes remain cumbersome, complex, and unpredictable.

We agree and believe that we have addressed many of these problems to the best of our ability in these chapters. The revisions emphasize combining analyses when practicable and, where appropriate, using information from one study in another. Both of these techniques should help decrease the cumbersomeness, complexity, and unpredictability of the NEPA process. The Departmental Manual NEPA chapters provide oversight guidance for eight bureaus with very diverse missions and statutory authorities, and, therefore, must balance both general and specific coverage for a number of issues. Also a specific environmental statement memorandum has been issued covering this topic. Reviewers are referred to our environmental statement memorandum series at: *http://www.doi.gov/oepc/ememoranda.html.*

One reviewer commented directly and others implied in some portions of their comments that the revised procedures were a positive step forward to improve NEPA implementation in the department.

We appreciate these comments.

Several reviewers offered comments proposing no changes to the text of the chapters or comments expressing an opinion on the department's proposed changes.

These comments were all read and considered; and, in some cases, assisted our revision of specific sections of the procedures or supported other reviewers' recommendations. We appreciate the input provided in these comments.

516 DM 1

1.2 Policy

One reviewer recommended a wording change to 1.2B and 1.2C concerning references to section 101 of NEPA and to the definition of the human environment in 40 CFR 1508.14.

We agree and have amended both subparts along with subpart 1.2D.

1.3 General Responsibilities

One reviewer suggests that our requirements in 1.3D(4) are beyond the scope of NEPA.

We disagree and refer reviewers to sections 102(1), 102(2)(A), 102(2)(G), 102(2)(H), and 104(1).

Several reviewers commented on the concept of consensus-based management in 1.3D(5).

Comments were both for and against our use of the concept and also offered using the term "information-based management" as a substitute. Some concern was voiced about compliance with the Federal Advisory Committee Act (FACA) and that States may have to provide training on Federal laws for which they have no expertise and often have no funds to provide any training. We have reviewed the subpart again and believe that these concerns are unfounded. We also refer the reviewers to our environmental statement memorandum on the Web site noted above under the general comment on the NEPA Task Force Report. We feel that sufficient flexibility is built into these new concepts to make them workable under existing budget conditions at both Federal and State levels. Finally, legal review of our consensus-based management advises that it is compliant with FACA.

Several reviewers spoke in support of tiered and transferred analyses in 1.3D(6).

The support is appreciated.

Several reviewers spoke in support of the adaptive management concept introduced in 1.3D(7).

We appreciate the support.

One reviewer suggest the addition of the CEQ Regulations to 1.3E(1).

We agree and have done so.

One reviewer suggested that collecting baseline data be added to 1.3E(3) and adding a similar passage to 4.17C.

We believe that the general requirement in 1.4A(4) is sufficient to bind Departmental managers on this subject.

1.4 Consideration of Environmental Values

One reviewer voiced support for 1.4A(1).

We appreciate the support.

One reviewer voiced support for 1.4A(3).

We appreciate the support.

Several reviewers commented on and suggested wording changes to the baseline data provision in 1.4A(4).

The Department understands that baseline data are both necessary to environmental analysis and can be controversial from the standpoint of determining what the baseline is and how to get those data for a given project. We believe that this subpart is appropriate for the Department and its bureaus as written. We believe that it is best to provide Departmental managers with this overall guidance and let project specific NEPA documents and their public comments determine whether baseline has been properly defined and documented.

Several reviewers commented on 1.4A(5) giving support, concerned about requiring combined EISs in the same area, and concerned that CXs ignore cumulative impacts.

This provision is written with sufficient flexibility to allow Departmental managers to determine the best way to integrate existing environmental analyses and data into their NEPA documents and does not require combined NEPA documents by several agencies unless that is the most efficient and effective method to adequately comply with NEPA. We also call attention to extraordinary circumstance 2.6 in 516 DM 2; Appendix 2 that is intended to assure that cumulative impacts are not ignored when applying CXs.

One reviewer noted that 1.4A(6) does not and should not require completion of all approvals before DOI completes a NEPA document.

This is understood and Departmental EISs have always identified and discussed any remaining approvals needed before an action could be taken.

One comment supported 1.4B.

We appreciate the comment.

1.5 Consultation, Coordination, and Cooperation With Other Agencies and Organizations

Several comments were made on 1.5A(1) concerning the applicability of certain laws such as the Patriot Act and the Federal Land Policy and Management Act.

We have reviewed the subpart and have added the qualifier "to the extent allowed by law" in the second sentence. The comments are well founded, but because several other statutes are applicable and applicability can vary depending upon the case at hand, we took a more general approach to fixing the subpart in a way that provides coverage for both current and future laws.

A reviewer expressed support for 1.5A(3) concerning the use of electronic systems but cautioned against total reliance on them.

We understand the concern that many portions of the public still do not have computers or Internet access. Our guidance memorandum on this topic (see *http://www.doi.gov/oepc/ememoranda.html*) and 1.5A(2) requires our bureaus to continue providing paper copies of NEPA documents to anyone requesting them.

Two different comments were received on 1.5B(3). One concerned the potential exclusion of certain interested parties in projects involving international considerations. The other was that DOI would consider global implications such as climate change and deforestation in its decision-making.

There is no intent to exclude appropriate interested parties in this subpart, and the subpart has been revised accordingly. The subpart is a broad statement that the Department will play an appropriate role in international environmental issues to the extent it is authorized to do so. The subpart recognizes the concepts set forth in section 102(2)(F) of the Act and further embodied in Executive Order 12114 (Environmental Impacts Abroad of Major Federal Actions).

1.6 Public Involvement

A reviewer commented that this section should only be an issue if the Federal agency can demonstrate that a State has no public participation program.

As noted above in the general discussion of State public participation programs, public participation is required of all Federal agencies. It is not our intent to ignore the efforts of State governments to fully involve the public nor should our efforts duplicate State efforts. The Department is fully aware of 40 CFR 1500.4(n) which calls for eliminating duplication with State and local procedures. Departmental managers are expected to combine their efforts with States when it is appropriate, as determined by both governments.

One reviewer supported 1.6B on NEPA status reporting.

We appreciate the comment.

516 DM 2

2.1 Purpose

A reviewer has commented on the seemingly restrictive character of the often used phrase: Federal, State, and

local agencies (including Tribal governments) in this chapter. The concern is that other interested parties may not qualify for joint lead and cooperating agency roles or for general involvement in NEPA compliance activities.

NEPA is a Federal statute and its provisions, as well as the Departmental and bureau procedures, govern DOI's implementation. However, this does not preclude the involvement of interested parties that are not local governments from participating in scoping and in the development of NEPA analyses and documents. The CEQ Regulations at 40 CFR 1501.2(d)(2) require that Federal agencies consult early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when such involvement is reasonably foreseeable. There are a number of other places in the regulations and this Departmental Manual that provide for public involvement and stress public involvement as an important part of full NEPA compliance. See also 2.2D and 2.6B. Finally, it is noted that the Department did not fairly paraphrase in footnote 4 the meaning of the July 1999, September 2000, and January 2002 CEQ guidance on the topic of cooperating agencies. We have reviewed our footnote and the CEQ guidance and believe that we have properly portrayed CEQ's meaning by paraphrasing their discussion urging Federal agencies to more actively solicit participation from State and local agencies.

2.2 Apply NEPA Early

A county reviewer is concerned that 2.2A does not explicitly include counties for consultation purposes.

Please see the response given above in 2.1 to a similar concern. Counties are included as units of local government.

One reviewer has indicated support for subpart 2.2A.

We appreciate the support.

One reviewer has indicated support for subpart 2.2B.

We appreciate the support.

Several reviewers commented on subpart 2.2D concerned that consensus should not be required on any part of the process beyond identification of issues and concerned that interested parties who decline their participation early may not enter the process at a later date.

We have reviewed the subpart and determined that only minor adjustments were needed. The subpart currently handles the subject with a moderate approach both promoting the use of consensus-based management while recognizing the limits on its use due to statutory, regulatory, and policy constraints. Concerning the late introduction of issues, we believe the current language is satisfactory and allows the individual manager to handle the late introduction of issues and alternatives in an appropriate manner. Another specific comment requested specific timelines and notice for comment. Again, we believe that these procedures should not usurp the local manager's ability to work out arrangements with interested parties that fit the individual situation.

One reviewer recommended a new 2.2F that would clearly indicate that NEPA applied only to Federal actions.

We have made this addition.

2.3 Whether To Prepare an EIS

One reviewer recommended that subpart 2.3A(1) be revised in (b) to read as follows:

Unresolved conflicts concerning alternative uses of available resources will not be a sole reason to disallow the use of an otherwise acceptable categorical exclusion.

This arises from a general concern from several reviewers that unresolved conflicts should not be a reason for not applying a specific categorical exclusion as expressed in extraordinary circumstance 2.3 or that unresolved conflicts should even be a criterion for establishing a category. There was additional comment that our reference to section 102(2)(E) of NEPA was also a misinterpretation of the Act.

We considered these concerns and removed the unresolved conflicts criterion in 2.3A(1)(b) but have not removed that same portion of extraordinary circumstance 2.3. At least one bureau has indicated that this addition to the extraordinary circumstance is necessary in the successful application of their categorical exclusions. Finally, we believe that our reference to section 102(2)(E) is appropriate and is further confirmed in 40 CFR 1507.2(d).

A reviewer suggested that 2.3A(3) concerning documentation of categorical exclusions not include extensive review and documentation as noted in the CEQ NEPA Task Force report.

The subpart calls for "* * * sufficient environmental review to determine whether it meets any of the extraordinary circumstances. * * *" We believe that this is satisfactory language to cover this issue.

One reviewer expressed support for 2.3D.

We appreciate the support.

One reviewer expressed support for 2.3F.

We appreciate the support.

2.4 Lead Agencies

One reviewer suggested that 2.4E needs to list statutes in which lead agency designations may be required.

We have researched this and were advised that the Natural Gas Act is one statute where the lead agency is designated to be the Federal Energy Regulatory Commission. We do not believe that a change is warranted because these statutes will surface in any NEPA proceeding where they may have an impact and will not be overlooked. Further, these procedures necessarily refrain from publishing lists and other specific data which may change periodically and would thereby require the Department to revise these procedures. Instead, the Department has an environmental guidance memorandum system where data such as this may be made available (see *http://www.doi.gov/oepc/ememoranda.html*).

2.5 Cooperating Agencies

Several reviewers commented on 2.5D from the standpoint of needing high level clearance, use of specific wording from the CEQ Regulations, and lack of funding at the local level.

We have considered these comments and made some changes to the subpart to be more specific about what should happen between bureaus and cooperating agencies. We believe the subpart now reflects the regulations to the best extent possible. As a practical matter, cooperating agency arrangements are best made at the local manager's level so that work can begin and proceed efficiently without requiring and waiting for clearance from higher levels. In the event that cooperating agencies do not meet their commitments, higher level managers can be brought in at the appropriate time to help resolve any differences. On the subject of funding raised by one of the reviewers, it is recognized that local governments qualifying for cooperating agency status may not always have sufficient funds to participate. The CEQ Regulations allow for this in 40 CFR 1501.6(b)(5) and this is taken into account in the factors provided with the January 2002 guidance memorandum from CEQ, but, unfortunately, some opportunities may be missed due to resource limitations.

2.6 Scoping

A reviewer commented in 2.6A that counties with limited budgets and staff should be able to receive direct invitations to scoping meetings.

We understand the budget constraints that governments may have from time to

time but believe that notices of intent to do an EIS and hold scoping meetings are now easily obtained from the **Federal Register** online. Local notifications are often published in newspapers and newsletters.

Several reviewers offered support for 2.6B, made a suggested revision to include State, local, and Tribal governments, and called attention to the applicability of a previous comment made on 1.5A(1).

We appreciate the support and have made the suggested change to the extent we felt was necessary. Regarding subpart 1.5A(1), we refer the reviewer to the response made there.

A reviewer offered support for 2.6C.

Again, we appreciate the support.

2.7 Time Limits

Several reviewers recommended that 2.7A be strengthened to require time limits.

We believe that the subpart as written best complies with the CEQ Regulations on this topic. In 40 CFR 1501.8, CEQ recognized that prescribed time limits would be too inflexible. Further, our experience with prescribed time limits for the preparation of NEPA analyses and documents as well as other Departmental matters show that unforeseen events can cause missed deadlines, but that progress continues to be made.

In subpart 2.7B it is recommended that staff should be assembled and trained in the type of project to be analyzed.

We have made minor changes to this subpart to reinforce this concept.

Appendix 1

One reviewer indicated continued opposition to CXs 1.11 and 1.12 concerning fuels reduction and rehabilitation.

The comment is noted, but no change will be made since these CXs were the subject of previous notice and comment prior to their adoption.

It was also recommended that CX 1.8 be narrowed to exclude minor boundary changes and land titles.

Again, no change will be made since the historical exercise of this CX has not uncovered systemic abuse of its use or any reason to re-evaluate its use.

Appendix 2

Several reviewers commented on the need for objective standards in the extraordinary circumstances and recommended re-wording of several of them.

We have reviewed the extraordinary circumstances with these comments in mind and have made several changes to bring about more continuity and objectivity. Particularly, we have used the word significant as used in the definition of categorical exclusion in 40 CFR 1508.4. We have also made direct changes to some of them as recommended by the public comments. On those recommended word changes where we disagreed, we have made no changes. Following are specific responses to comments on each extraordinary circumstance.

2.1—We have substituted the term "significant impacts" for the term "significant adverse affects." This change acknowledges the fact that a categorical exclusion may not be warranted if the proposed action may have affects that are largely positive or negative.

2.2—We have used the phrase "significant impacts," at the beginning to help create consistency. We have added migratory birds. We have not added the phrase, under Federal ownership or jurisdiction, as suggested, because project effects may impact areas adjacent to Federal lands.

2.3—No change.

2.4—No change. One reviewer did suggest deletion of this extraordinary circumstance. However, we have determined that it should be retained because our experience has shown that it is sometimes needed and used.

2.5—No change.

2.6—We revised this to be more consistent with the other extraordinary circumstances.

2.7—We have used the phrase "significant impacts," at the beginning to help create consistency.

2.8—We have used the phrase "significant impacts," throughout to help create consistency. We have retained the phrase, proposed to be listed, because it is contained in the Endangered Species Act and serves to alert analysts, reviewers, proponents, and decision makers of the pending possibility of listing.

2.9—We have made minor modifications.

2.10—We have made minor modifications.

2.11—We have added the phrase, on Federal lands, to clarify this point.

2.12—We have made minor modifications.

Several reviewers expressed continued concern that we do not require the presence of an extraordinary circumstance to halt the use of a CX but allow the phrase "* * * have significant adverse effects on * * *" to be the determining factor.

Experience has shown that the Department must have some leeway in this matter to allow local managers to make a determination on whether to use a CX. There are those who wish to have no CXs applied and those who wish to have more CXs and less EAs and EISs produced. The varied missions of the Department call for balancing these competing interests to serve the public in the best possible way. We have retained the spirit of this section while changing the wording to "significant impact."

516 DM 3

3.3 Public Involvement

Several reviewers made comments from differing points of view on 3.3B.

We believe that our revised wording is now consistent with the CEQ Regulations and the policy statements made earlier in chapter 1 of this part.

516 DM 4

4.3 Timing

One reviewer supports 4.3A.

We appreciate the support.

Several reviewers requested a change in 4.3B concerning the offshore minerals example.

Based on the comments and the cited court cases, we have made the change.

4.10 Alternatives Including the Proposed Action

One reviewer recommended the addition of an item on the human environment.

We have made a reference to 40 CFR 1508.14 in subpart 1.2D. Such an addition in 4.10A would not be consistent with the intent of the subpart which describes the commonly used terms when dealing with NEPA alternatives.

One reviewer suggests a revision to 4.10A(2), reasonable alternative.

We decline to make the change since the language was derived from Question 2 in CEQ's "Forty Most Asked Questions" guidance document.

One reviewer suggested a change for 4.10A(4), preferred alternative.

We have changed the definition to conform more precisely with that given in the "Forty Most Asked Questions."

One reviewer recommended that 4.10A(5), environmentally preferred alternative be omitted from the subpart. Further the reviewer indicated that the term does not appear in NEPA documentation.

We disagree and have not omitted the subpart. Both 40 CFR 1505.2(b) and the "Forty Most Asked Questions" discuss the term.

A reviewer recommends defining the term, participating communities in 4.10D.

We have opted to change the word "communities" to the phrase

"interested parties" which is more consistent with other references to this topic throughout the chapters.

4.12 Tiering

One reviewer supports 4.12B.

We appreciate the support.

4.15 Methodology and Scientific Accuracy

A reviewer recommended that we add language to 4.15 to identify the information quality requirements that were established by Section 515 of the Treasury and General Government Appropriation Act for Fiscal Year 2001.

We have made this addition.

4.16 Adaptive Management

One reviewer commented that they support the concept of a working group on adaptive management to be set up under the CEQ NEPA Task Force report and suggests that DOI wait for the outcome before incorporating adaptive management activities into bureau activities.

We have indicated above in a general comment on the NEPA Task Force report that we have the flexibility to react to any changes that arise from the working group's recommendations. Some of the Department's bureaus already have experience in the use of adaptive management in their programs dating back a number of years. The Department is comfortable with this addition to the procedures and believes that the subpart provides the basics of adaptive management so that any future adjustments can be made through our environmental guidance memoranda series.

Another reviewer noted that adaptive management could be used to make multiple decisions without doing additional environmental analysis and offered a number of references describing adaptive management and how it should be used.

We appreciate the information and will continue to consider it as we apply adaptive management. The Department is well aware of the possibility that adaptive management could be used to confuse environmental issues and lead to possible multiple decisions (piecemealing). However, our experience shows that DOI has properly used adaptive management to achieve better mitigation in the absence of a full knowledge of impacts at the time the analysis is performed.

A final comment endorsed the change in management approach when anticipated mitigation outcomes are not being met.

We agree.

4.17 Environmental Review and Consultation Requirements

A reviewer noted support for 4.17C but cautioned that not all approvals had to be in place before completing the EIS.

The text has been modified to show this.

4.19 Response to Comments.

A reviewer commented that 4.19A and B contradicted other subparts, particularly 2.2B and D on involving interested parties early and eliminating late input to the NEPA process.

We have reviewed these subparts, modified both of them, and related 4.19B to 2.2D. We wish to point out, however, that 2.2D is primarily aimed at the late introduction of issues and alternatives and that 4.19A and B are discussing any late comments regardless of their content.

4.25 Proposals for Legislation

A reviewer expressed support for 4.25B.

We appreciate the support.

4.26 Time Periods

A reviewer has recommended the retention of the 60 day review period for draft EISs.

This subpart was changed to mesh properly with the EPA filing process. Forty five (45) days is the minimum public comment period for draft EISs prescribed by the CEQ Regulations and is counted from the publication of EPA's notice of availability. This often means that an EIS has been printed and sent to the public as much as five to seven days prior to the EPA notice appearing in the **Federal Register.** So receipt by the public is usually coincident with the EPA publication. On complex or controversial projects, our bureaus have provided longer comment periods (*e.g.*, 60 to 90 days), and they retain this flexibility. Therefore, no change has been made.

516 DM 5

5.5 Implementing the Decision

It was recommended that the word natural be deleted from the subpart.

We disagree and have not made the change. The definition of human environment in 40 CFR 1508.14 clearly says that human environment is to include the natural and physical environment.

5.8 Emergencies

A suggestion was made that the phrase: serious resource losses be struck from the discussion in this subpart.

The topic of emergencies was reviewed in the Department in 1997, and further guidance was developed for bureaus which included additional CEQ guidance on the topic. This guidance is available in an environmental statement memorandum, ESM97–3, that is available on the Web site noted earlier in this manual. We decided, based upon actual emergency experience in the Department in 1997, that the two most important points to address in the manual were: (1) Take the action if life, property, and resources are threatened and (2) immediately consult with the Department and CEQ if there are significant impacts. The guidance contained in ESM97–3 uses the phrase, important resource, and indicates that importance may reflect economic, social, or cultural values. We have changed the subpart to use the term, important resources.

516 DM 7

7.4 Types of Reviews

One reviewer has recommended that the National Historic Preservation Act be added to 7.4K.

We have made this change.

Procedural Requirements: The following list of procedural requirements has been assembled and addressed to contribute to this open review process. Today's publication is a notice of final, internal Departmental action and not a rulemaking. However, we have addressed the various procedural requirements that are generally applicable to proposed and final rulemaking to show how they would affect this notice if it were a rulemaking.

Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) it has been determined that this action is the implementation of policy and procedures applicable only to the Department of the Interior and not a signfficant regulatory action. These policies and procedures would not impose a compliance burden on the general economy.

Administrative Procedures Act

This document is not subject to prior notice and opportunity to comment because it is a general statement of policy and procedure [(5 U.S.C. 553(b)(A)]. However, notice and opportunity to comment is required by the CEQ Regulations [40 CFR 1507.3(a)].

Regulatory Flexibility Act

This document is not subject to notice and comment under the Administrative Procedures Act, and, therefore, is not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C.

601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

Small Business Regulatory Enforcement Fairness Act

These policies and procedures do not comprise a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The document will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts. Further, it will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation. Finally, the document does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this document will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. The document does not require any additional management responsibilities. Further, this document will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. These policies and procedures are not expected to have significant economic impacts nor will they impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

Federalism

In accordance with Executive Order 13132, this document does not have significant Federalism effects; and, therefore, a Federalism assessment is not required. The policies and procedures will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially, directly affected. Therefore, the document does not have significant effects or implications on Federalism.

Paperwork Reduction Act

This document does not require information collection as defined under the Paperwork Reduction Act. Therefore, this document does not constitute a new information collection system requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action.

Essential Fish Habitat

We have analyzed this document in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this document will not affect the essential fish habitat of Federally managed species; and, therefore, an essential fish habitat consultation on this document is not required.

Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it describes the Department's procedures for its compliance with NEPA.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 of May 18, 2001, requires a Statement of Energy Effects for significant energy actions. Significant energy actions are actions normally published in the **Federal Register** that lead to the promulgation of a final rule or regulation and may have any adverse effects on energy supply, distribution, or use. We have explained above that this document is an internal Departmental Manual part which only affects how the Department conducts its business under the National Environmental Policy Act. This manual part is not a rulemaking; and, therefore, not subject to Executive Order 13211.

Actions To Expedite Energy-Related Projects

Executive Order 13212 of May 18, 2001, requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. Today's publication is in conformance with this requirement as it promotes existing process streamlining requirements and revises the text to emphasize this concept (see chapter 4, subpart 4.17).

Government Actions and Interference With Constitutionally Protected Property Rights

In accordance with Executive Order 12630 (March 15, 1988) and part 318 of the Departmental Manual, the Department has reviewed today's notice to determine whether it would interfere with constitutionally protected property rights. Again, we believe that as internal instructions to bureaus on the implementation of the National Environmental Policy Act, this publication would not cause such interference.

(Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations 40 CFR 1507.3)

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

Department of the Interior—Departmental Manual

Effective Date:
Series: Environmental Quality.
Part 516: National Environmental Policy Act of 1969.
Chapter 1: Protection and Enhancement of Environmental Quality.
Originating Office: Office of Environmental Policy and Compliance.

516 DM 1

1.1 Purpose

This Chapter establishes the Department's policies for complying with title I of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) (NEPA); section 2 of Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991; Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; and the regulations of the Council on Environmental Quality (CEQ)

implementing the procedural provisions of NEPA (40 CFR 1500–1508; identified in this Part 516 as the CEQ Regulations).

1.2 Policy

It is the policy of the Department:

A. To provide leadership in protecting and enhancing those aspects of the quality of the Nation's environment which relate to or may be affected by the Department's policies, goals, programs, plans, or functions in furtherance of national environmental policy;

B. To the fullest practicable extent, to encourage public involvement in the development of Departmental plans and programs through State, local, and Tribal partnerships and cooperative agreements at the beginning of the NEPA process, and to provide timely information to the public to better assist in understanding such plans and programs affecting environmental quality in accordance with the CEQ Regulations;

C. To interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered by the Department in accordance with the requirements of sections 101 and 102 of NEPA;

D. To consider and give important weight to environmental factors, along with other societal needs, in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural, and human resources and the protection and enhancement of environmental quality (see section 101 of NEPA and 1508.14);

E. To consult, coordinate, and cooperate with other Federal agencies and, particularly, State, local, Alaska Native Corporations, and Indian tribal governments in the development and implementation of the Department's plans and programs affecting environmental quality and, in turn, to give consideration to those activities that succeed in best addressing State and local concerns;

F. To be innovative in natural resource protection and to use all practicable means, consistent with other essential considerations of national policy, to improve, coordinate, and direct its policies, plans, functions, programs, and resources in furtherance of national environmental goals;

G. To rigorously integrate systematic, interdisciplinary approaches into the design of all activities and to base decision making on adequate environmental data in order to identify reasonable alternatives to proposed actions that will avoid or minimize adverse environmental impacts;

H. Where necessary, to monitor, evaluate, and control activities to protect and enhance the quality of the environment and to base decision making on monitoring data and evaluation results; and

I. To cooperate with and assist the CEQ.

1.3 General Responsibilities

The following responsibilities reflect the Secretary's decision that the officials responsible for making program decisions are also responsible for taking the requirements of NEPA into account in those decisions and will be held accountable for that responsibility:

A. Assistant Secretary—Policy, Management and Budget (AS/PMB)

(1) Is the Department's focal point on NEPA matters and is responsible for overseeing the Department's implementation of NEPA.

(2) Serves as the Department's principal contact with the CEQ.

(3) Assigns to the Director, Office of Environmental Policy and Compliance (OEPC), the responsibilities outlined for that Office in this Part.

B. Solicitor

Is responsible for providing legal advice in the Department's compliance with NEPA.

C. Assistant Secretaries

(1) Are responsible for compliance with NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part for bureaus and offices under their jurisdiction.

(2) Shall ensure that, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction are interpreted and administered in accordance with the requirements of NEPA.

D. Heads of Bureaus and Offices

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part.

(2) Shall interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction in accordance with the requirements of NEPA.

(3) Shall continue to review their statutory authorities, administrative regulations, policies, programs, and procedures, including those related to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the intent, purpose, and provisions of NEPA and, in consultation with the Solicitor and the Office of Congressional and Legislative Affairs, shall take or recommend, as appropriate, corrective actions as may be necessary to bring these authorities and policies into conformance with the intent, purpose, and procedures of NEPA.

(4) Shall monitor, evaluate, and control on a continuing basis their activities as needed to protect and enhance the quality of the environment. Such activities will include both those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. They will develop programs and measures to protect and enhance environmental quality. They will assess progress in meeting the specific objectives of such activities as they affect the quality of the environment.

(5) Shall, in furtherance of public participation practices (*see* 1.2B, above), use consensus-based management [1] and community-based NEPA training [2] to the extent possible in all NEPA compliance activities. Will ensure that the Department's collaborative efforts under this part comply with the Federal Advisory Committee Act (FACA), 5 U.S.C., appendix.[3]

(6) Shall use tiered and transferred analyses to help avoid needless repetition. They will require decision makers to produce NEPA documents that save resources and reduce the public's perception that NEPA documents merely accomplish compliance with a process and do not add to the general knowledge of environmental impacts to natural resources.

(7) Shall use adaptive management (see 516 DM 4.16) to fully comply with 40 CFR 1505.2 which requires a monitoring and enforcement program to

[1] Consensus-based management in the NEPA context is the inclusion of interested parties with an assurance for the participants that the results of their work will be given consideration by the decision maker in selecting a course of action. It is a logical outgrowth of public participation.

[2] Community-based training in the NEPA context is the training of local participants with Federal participants in the intricacies of the environmental planning and decision making effort as it relates to the local community(ies). It should de-mystify the process and inform participants how to become effectively involved.

[3] To ensure FACA compliance, each bureau and office will verify whether FACA applies, and will ensure that the FACA requirements are followed anytime the Department utilizes (*i.e.* manages and controls) or establishes a group to be consulted or to provide recommendations to a Departmental official.

be adopted, where applicable, for any mitigation activity.

E. Heads of Regional, Field, or Area Offices

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, Executive Order 12114, the CEQ Regulations, and this Part.

(2) Shall use information obtained in the NEPA process, including pertinent information provided by State and local agencies, Indian tribal governments, and interest groups, to identify reasonable alternatives to proposed actions that will avoid or minimize adverse impacts to the human environment while improving overall environmental results.

(3) Shall monitor, evaluate, and control their activities on a continuing basis to further protect and enhance the quality of the environment.

1.4 Consideration of Environmental Values

A. In Departmental Management

(1) In the management of the natural, cultural, and human resources under its jurisdiction, the Department must consider and balance a wide range of economic, environmental, and societal needs at the local, regional, national, and international levels, not all of which are quantifiable in comparable terms. In considering and balancing these objectives, Departmental plans, proposals, and decisions often require recognition of complements and resolution of conflicts among interrelated uses of these natural, cultural, and human resources within technological, budgetary, and legal constraints. Various Departmental conflict resolution mechanisms are available to assist this balancing effort.

(2) Departmental project reports, program proposals, issue papers, and other decision documents must carefully analyze the various objectives, resources, and constraints, and comprehensively and objectively evaluate the advantages and disadvantages of the proposed actions and their reasonable alternatives. Where appropriate, these documents will contain or reference supporting and underlying economic, environmental, technological, and other societal analyses in language that all participants can understand and use.

(3) The underlying environmental analyses will factually, objectively, and comprehensively analyze the environmental effects of proposed actions and their reasonable alternatives. They will systematically analyze the environmental impacts of alternatives, and particularly those alternatives and measures that would reduce, mitigate or prevent adverse environmental impacts or that would enhance environmental quality. However, such an environmental analysis is not, in and of itself, a program proposal or the decision document, is not a justification of a proposal, and will not support or deprecate the overall merits of a proposal or its various alternatives.

(4) Environmental analyses shall strive to provide baseline data where possible and shall provide monitoring and evaluation tools as necessary to ensure that an activity is implemented as contemplated by the NEPA analysis. Baseline data gathered for these analyses may include pertinent social, economic, and environmental data.

(5) If proposed actions are planned for the same geographic area or are otherwise closely related, environmental analysis should be integrated to ensure adequate consideration of resource use interactions, to reduce resource conflicts, to establish baseline data, to monitor and evaluate changes in such data, to adapt actions or groups of actions accordingly, and to comply with NEPA and the CEQ Regulations. Proposals shall not be segmented in order to reduce the levels of environmental impacts reported in NEPA documents.

(6) When proposed actions involve approval processes of other agencies, the Department shall use its lead role to identify opportunities to consolidate those processes.

B. In Internally Initiated Proposals

Officials responsible for development or conduct of planning and decision making systems within the Department shall incorporate environmental planning as an integral part of these systems in order to ensure that environmental values and impacts are fully considered, facilitate any necessary documentation of those considerations, and identify reasonable alternatives in the design and implementation of activities that minimize adverse environmental impacts. An interdisciplinary approach shall be initiated at the earliest possible time to provide for consultation among all participants for each planning or decision making endeavor. This interdisciplinary approach should, to the extent possible, have the capacity to consider innovative and creative solutions from all participants.

C. In Externally Initiated Proposals

Officials responsible for the development or conduct of loan, grant, contract, lease, license, permit, or other externally initiated activities shall require applicants, to the extent necessary and practicable, to provide environmental information, analyses, and reports as an integral part of their applications. As with internally initiated proposals, officials shall encourage applicants and other interested parties to consult with the Department and provide their comments, recommendations, and suggestions for improvement.

1.5 Consultation, Coordination, and Cooperation with Other Agencies and Organizations

A. Departmental Plans and Programs

(1) Officials responsible for planning or implementing Departmental plans and programs will develop and utilize procedures to consult, coordinate, and cooperate with relevant State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals concerning the environmental effects of these plans and programs on their jurisdictions or interests. Such efforts should, to the extent allowed by law and in accordance with FACA, include consensus-based management whenever possible. This is a planning process that incorporates direct community involvement into bureau activities from initial scoping through implementation of the bureau or office decision and, in appropriate cases, monitoring and future adaptive management measures. All bureau NEPA and planning procedures will be made available to the public.

(2) Bureaus and offices will use, to the maximum extent possible, existing notification, coordination, and review mechanisms established by the Office of Management and Budget and CEQ. However, use of these mechanisms must not be a substitute for early consultation, coordination, and cooperation with others, especially State, local, and Indian tribal governments.

(3) Bureaus and offices are encouraged to expand, develop, and use new forms of notification, coordination, and review, particularly by electronic means and the Internet. Bureaus are also encouraged to stay abreast of and use new technologies in environmental data gathering and problem solving.

B. Other Departmental Activities

(1) Technical assistance, advice, data, and information useful in restoring, maintaining, and enhancing the quality of the environment will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(2) Information regarding existing or potential environmental problems and control methods developed as a part of research, development, demonstration, test, or evaluation activities will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(3) Recognizing the worldwide and long-range character of environmental problems and consistent with the foreign policy of the United States, appropriate support will be made available (in consultation with clearly defined interested parties including Tribal governments, if applicable) to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.

C. Plans and Programs of Other Agencies and Organizations

(1) Officials responsible for protecting, conserving, developing, or managing resources under the Department's jurisdiction shall coordinate and cooperate with State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals, and provide them with timely information concerning the environmental effects of these entities' plans and programs.

(2) Bureaus and offices are encouraged to participate early in the planning processes of other agencies and organizations in order to ensure full cooperation with, and understanding of, the Department's programs and interests in natural, cultural, and human resources.

(3) Bureaus and offices will use, to the fullest extent possible, existing Departmental review mechanisms to avoid unnecessary duplication of effort and to avoid confusion by other organizations.

(4) Bureaus and offices will work closely with other Federal agencies to ensure that similar or related proposed actions in the same geographic area are fully evaluated to determine if agency analyses can be integrated so that one NEPA compliance document can be used by all for their individual permitting and licensing needs.

1.6 Public Involvement

A. Bureaus and Offices, in accordance with 301 DM 2 and this part, will develop and implement procedures to ensure the fullest practicable provision of timely public information and understanding of their plans and programs with environmental impacts including information on the environmental impacts of alternative courses of action. This is to include public involvement in the development of NEPA analyses and documents.

B. These procedures will include, wherever appropriate, provision for public meetings in order to obtain the views of interested parties, newsletters, and status reports of NEPA compliance activities. Public information shall include all necessary policies and procedures concerning plans and programs in a readily accessible, consistent format.

C. Bureaus and offices will also coordinate and collaborate with State and local agencies and Indian tribal governments in developing and using similar procedures for informing the public concerning their activities affecting the quality of the environment.

1.7 Mandate

A. This Part provides Department-wide instructions for complying with NEPA, Executive Orders 11514, as amended by 11991 (Protection and Enhancement of Environmental Quality) and 12114 (Environmental Effects Abroad of Major Federal Actions), and the CEQ Regulations. The provisions of part 516 are intended to establish guidelines to be followed by the Department and its Bureaus, Services and Offices. Part 516 is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. The provisions of part 516 are not intended to direct or bind any person outside the Department.

B. The Department hereby adopts the CEQ Regulations implementing the procedural provisions of NEPA [sec. 102(2)(C)] except where compliance would be inconsistent with other statutory requirements. In the case of any discrepancies among these procedures and the NEPA statute; Executive Orders 11514, 11991, and 12114; or the mandatory provisions of the CEQ Regulations, the laws, executive orders, and regulations shall govern.

C. Instructions supplementing the CEQ Regulations are provided in chapters 2–7 of this part. Citations in brackets refer to the CEQ Regulations.

D. Instructions specific to each bureau are found in chapters 8 through 15. This portion of the manual may expand or contract depending on the number of bureaus existing at any particular time. In addition, bureaus may prepare handbooks or other technical guidance for their personnel on how to apply this part to principal programs. In the case of any apparent discrepancies between these procedures and bureau handbooks or technical guidance, 516 DM 2–7 shall govern.

Department of the Interior—Departmental Manual

Effective Date:
Series: Environmental Quality.
Part 516: National Environmental Policy Act of 1969.
Chapter 2: Initiating the NEPA Process.
Originating Office: Office of Environmental Policy and Compliance.

516 DM 2

2.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to initiating the NEPA process. The numbers in parentheses signify the appropriate citation in the CEQ Regulations.

2.2 Apply NEPA Early (40 CFR 1501.2)

A. Bureaus shall initiate early consultation and coordination with other bureaus and any Federal agency having jurisdiction by law or special expertise with respect to any environmental issue that should be addressed, and with appropriate Federal, State, local and Indian tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources.

B. Bureaus shall also initiate the consultation process with interested parties and organizations at the time an application is received, or when the bureau initiates action on an agency plan or project requiring NEPA analyses and documentation.

C. Bureaus shall revise or amend program regulations, requirements, and directives to ensure that private or non-Federal applicants are informed of any environmental information required to be included in their applications and of any consultation with other Federal agencies, or State, local, or Indian tribal governments required prior to making the application. A discussion and a list of these regulations, requirements, and directives are found in 516 DM 6.4 and

6.5. The specific regulations, requirements, and directives for each bureau are found in separate chapters of this part beginning with chapter 8.

D. It is imperative that bureaus enlist the participation of all interested parties as early as possible and provide any necessary community-based training in order to reduce costs, prevent delays, and to promote efficiency in the NEPA process. It is the intent of these procedures to achieve early consensus on the scope of NEPA compliance and the methodologies for collecting needed baseline data. Consensus-based management [as described in 516 DM 1.5(A)(1)] should be used, as appropriate, to facilitate this process including the consideration of any publicly developed alternatives. However, the use of consensus-based management may be restricted or ended based on applicable statutory, regulatory, or policy requirements. Further, it is the intent of these procedures to facilitate environmental analyses that avoid the late introduction of issues and alternatives that should have been identified initially during scoping.

E. Bureaus shall engage in a rigorous interdisciplinary approach at the earliest possible time to ensure adequate identification and consideration of the wide variety of environmental factors and considerations inherent in NEPA compliance activities.

F. NEPA applies to Department and bureau decision making and focuses on major Federal actions significantly affecting the quality of the human environment.

2.3 Whether To Prepare an Environmental Impact Statement (EIS) (40 CFR 1501.4)

A. Categorical Exclusions (CX) (40 CFR 1508.4)

(1) Categorical exclusions are defined as a group of actions that would have no significant individual or cumulative effect on the quality of the human environment and, for which in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required.

(2) Based on (1) above, the categories of actions listed in Appendix 1 to this Chapter are categorically excluded, Department-wide, from the preparation of environmental assessments or environmental impact statements. A list of CX specific to bureau programs will be found in the bureau chapters beginning with chapter 8. Note that 1508.18(a) excludes bringing judicial or administrative civil or criminal enforcement actions.

(3) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. The extraordinary circumstances to be considered when using categorical exclusions are listed in appendix 2 of this chapter. Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, further analysis and environmental documents must be prepared for the action. Bureaus are reminded and encouraged to work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the appendix 2 extraordinary circumstances.

B. Environmental Assessment (EA) (40 CFR 1508.9)

See 516 DM 3. Decisions/actions which would normally require the preparation of an EA will be identified in each bureau chapter beginning with chapter 8.

C. Finding of No Significant Impact (FONSI) (40 CFR 1508.13)

A FONSI will be prepared as a separate covering document based upon a review of an EA. Accordingly, the words *include(d)* in § 1508.13 will be interpreted *as attach(ed)* in reference to the EA.

D. Notice of Intent (NOI) (40 CFR 1508.22.)

An NOI will be prepared as soon as practicable after a decision to prepare an EIS and shall be published in the **Federal Register,** with a copy to the OEPC and made available to the affected public in accordance with § 1506.6. Publication of an NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an EIS and the time preparation is actually initiated. The notice, at a minimum, identifies key personnel, sets forth a schedule, and invites early comment. Scoping requests generally announce a schedule for scoping meetings where the agencies and the public can participate in the formal scoping process. These notices are also usually published in the **Federal Register** and may contain the text of a draft scoping document that outlines the actions, alternatives, and environmental issues and impacts identified at that time. The draft scoping document may also be made available upon request to a contact usually named in the notice.

E. Environmental Impact Statement (40 CFR 1508.11)

See 516 DM 4. Decisions/actions which would normally require the preparation of an EIS will be identified in each bureau chapter beginning with Chapter 8.

F. Existing environmental analyses should be used in analyzing impacts of a proposed action to the extent possible and appropriate. CEQ Regulations encourage agencies to make the best use of existing NEPA documents and to avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses. Use of existing documents carries with it a presumption that the bureaus will determine, in a deliberative manner and through agency procedures, that existing environmental analyses still adequately cover current actions.

2.4 Lead Agencies (40 CFR 1501.5)

A. The AS/PMB shall designate lead bureaus within the Department when bureaus under more than one Assistant Secretary are involved and cannot reach agreement on lead bureau status. The AS/PMB shall represent the Department in consultations with CEQ or other Federal agencies in the resolution of lead agency determinations.

B. Bureaus will inform the OEPC of any agreements to assume lead agency status. OEPC will assist in the coordination and documentation of any AS/PMB designations made in 2.4A.

C. To eliminate duplication with State and local procedures, a non-Federal agency (including Indian tribal governments) may be designated as a joint lead agency when it has a duty to comply with State or local requirements that are comparable to the NEPA requirements.

D. 40 CFR 1501.5 describes the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies. While the joint lead relationship is not precluded among several Federal agencies, the Department recommends that it be applied sparingly and that one Federal agency be selected as the lead with the remaining Federal, State, Indian tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the ensuing NEPA document will meet their needs for adoption and application to their related decision. If

joint lead is dictated by other law, regulation, policy, or practice, then one Federal agency shall be identified as the agency responsible for filing the EIS.

E. Lead agency designations may be required by law in certain circumstances.

2.5 Cooperating Agencies (40 CFR 1501.6)

A. The OEPC will assist Bureaus in determining cooperating agencies and coordinate requests from non-Interior agencies.

B. Bureaus will inform the OEPC of any agreements to assume cooperating agency status or any declinations pursuant to Section 1501.6(c).

C. Upon the request of the lead agency, any Federal agency with jurisdiction by law shall, and any Federal agency with special expertise may, be a cooperating agency. Any non-Federal agency (State, tribal, or local) may be a cooperating agency by agreement when it has jurisdiction by law (40 CFR 1508.15) or special expertise (40 CFR 1508.26) and meets the requirements of 40 CFR 1501.6. Bureaus will consult with the Solicitor's Office in cases where such non-Federal agencies are also applicants before the Department to determine relative lead/cooperating agency responsibilities.[4]

D. Bureaus and potential cooperating agencies are advised to express in a letter and, if necessary, a memorandum of understanding their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule.

2.6 Scoping (40 CFR 1501.7)

A. The invitation requirement in section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. Scoping is a process which continues throughout the planning and early stages of preparation of an EIS. Bureaus are encouraged through scoping to engage State, local, and Tribal governments and the public in the early identification of concerns, potential impacts, and possible alternative actions. Scoping requires interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process.

C. Scoping should encourage the responsible official to integrate analyses required by other environmental laws. Scoping should also be used to integrate other planning activities for separate projects that may have similar or cumulative impacts. Integrated analysis facilitates the resolution of resource conflicts and minimizes redundancy.

D. Through scoping meetings, newsletters, or other communication methods, it should be made clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping (see B and C above) are considered to be advisory.

2.7 Time Limits (40 CFR 1501.8)

A. Time limits are an important consideration and, when used diligently, can contribute greatly to a more efficient NEPA process. Bureaus are encouraged to set time limits of their own and to respond favorably to applicant requests for time limits and set them consistent with the requirements of 40 CFR 1501.8. Bureaus should work with cooperating agencies and agencies with which they must consult in setting time limits and encourage their commitment in meeting the time frames established.

B. When time limits are established, they should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which is encouraged to assemble a sufficiently well qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents.

CHAPTER 2; APPENDIX 1

Departmental Categorical Exclusions

The following actions are CXs pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these CX if any of the extraordinary circumstances listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions including such things as salaries and expenses, procurement contracts (in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

1.4 Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

1.5 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.6 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

1.7 Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.8 Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

1.9 Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

1.10 Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

1.11 Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities: Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;" Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.[5]

1.12 Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve

[4] CEQ guidance to agencies dated July 28, 1999, and January 30, 2002, urges agencies to more actively solicit participation of Federal, State, tribal, and local governments as cooperating agencies.

[5] Refer to the Environmental Statement Memoranda Series for additional, required guidance.

lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities: Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and Shall be completed within three years following a wildland fire.[6]

CHAPTER 2; APPENDIX 2

Categorical Exclusions: Extraordinary Circumstances

Extraordinary circumstances exist for individual actions within CXs which may:

2.1 Have significant impacts on public health or safety.

2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

2.7 Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.

2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.

2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).

2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

[6] Ibid.

Department of the Interior—Departmental Manual

Effective Date:
Series: Environmental Quality.
Part 516: National Environmental Policy Act of 1969.
Chapter 3: Environmental Assessments.
Originating Office: Office of Environmental Policy and Compliance.

516 DM 3

3.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to EAs.

3.2 When To Prepare (40 CFR 1501.3)

A. An EA will be prepared for all actions, except those covered by a categorical exclusion, those covered sufficiently by an earlier environmental document, or those actions for which a decision has already been made to prepare an EIS. The purpose of an EA is to allow the responsible official to determine whether to prepare an EIS or a FONSI.

B. In addition, an EA may be prepared on any action at any time in order to assist in planning and decision making, to aid an agency's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation.

3.3 Public Involvement

A. The public must be provided notice of the availability of EAs (40 CFR 1506.6).

B. Where appropriate, bureaus and offices, when conducting the EA process, shall provide the opportunity for public participation and shall consider the public comments on the pending plan or program.

C. The scoping process may be applied to an EA (40 CFR 1501.7).

3.4 Content

A. At a minimum, an EA will include brief discussions of the proposal, the need for the proposal, alternatives [as required by section 102(2)(E) of NEPA], the environmental impacts of the proposed action and such alternatives, and a listing of agencies and persons consulted [1508.9(b)].

B. In addition, an EA may describe a broader range of alternatives and proposed mitigation measures to facilitate planning and decision making.

C. The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

D. An EA will contain objective analyses that support its environmental impact conclusions. It will not conclude whether an EIS will be prepared. This conclusion will be made upon review of the EA by the responsible bureau official and documented in either a NOI or a FONSI.

E. Previous NEPA analyses should be used in a tiered analysis or transferred and used in a subsequent analysis to enhance the content of an EA whenever possible.

3.5 Format

A. An EA may be prepared in any format useful to facilitate planning, decision making, and appropriate public participation.

B. An EA may be combined with any other planning or decision making document; however, that portion which analyzes the environmental impacts of the proposal and alternatives will be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

3.6 Adoption

A. An EA prepared for a proposal before the Department by another agency, entity, or person, including an applicant, may be adopted if, upon independent evaluation by the responsible official, it is found to comply with this Chapter and relevant provisions of the CEQ Regulations.

B. When appropriate and efficient, a responsible official may augment such an EA when it is essentially, but not entirely, in compliance, in order to make it so.

C. If such an EA is adopted or augmented, responsible officials must prepare their own NOI or FONSI that acknowledges the origin of the EA and takes full responsibility for its scope and content.

D. Adoption or augmentation of an EA shall receive the same public participation that the EA would have received if it had originated with the adopting or augmenting bureau or office.

Department of the Interior—Departmental Manual

Effective Date:
Series: Environmental Quality.
Part 516: National Environmental Policy Act of 1969.
Chapter 4: Environmental Impact Statements.
Originating Office: Office of Environmental Policy and Compliance.

516 DM 4

4.1 Purpose

This chapter provides supplementary instructions for implementing those

portions of the CEQ regulations pertaining to EIS.

4.2 Statutory Requirements (40 CFR 1502.3)

NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

4.3 Timing (40 CFR 1502.5)

A. For such actions as broad programmatic decisions, rulemakings, or resource management plans, an EIS should be commenced whenever a proposed action has been defined. These types of actions can be inherently vague and difficult to analyze until the proposed action is defined. At that point, concurrent drafting of the proposal and its accompanying EIS should be commenced.

B. The feasibility analysis (go/no-go) stage, at which time an EIS is to be prepared for proposed projects undertaken by DOI, is to be interpreted as the stage prior to the first point of major commitment to the proposal. For example, this would normally be at the authorization stage for proposals requiring Congressional authorization; the location or corridor stage for transportation, transmission, and communication projects; and the leasing stage for offshore mineral resources proposals [40 CFR 1502.5(a)].

C. For situations involving applications to DOI or the bureaus, an EIS need not be commenced until an application is essentially complete; *i.e.*, any required environmental information is submitted and any required advance funding is paid by the applicant [40 CFR 1502.5(b)]. Officials shall also inform applicants of any responsibility they will bear for funding environmental analyses associated with their proposals.

4.4 Page Limits (40 CFR 1502.7)

Bureaus will ensure that the length of EISs is no greater than necessary to comply with NEPA, the CEQ regulations, and this Chapter.

4.5 Supplemental Statements (40 CFR 1502.9)

A. Supplements are required if an agency makes substantial changes in the proposed action relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

B. A bureau and/or the appropriate program Assistant Secretary will consult with the OEPC and the Office of the Solicitor prior to proposing to CEQ to prepare a supplemental statement using alternative arrangements such as issuing a final supplement without preparing an intervening draft.

C. If, after a decision has been made based on a final EIS, a described proposal is further defined or modified and if its changed effects are not significant and still within the scope of the earlier EIS, an EA, and a FONSI may be prepared for subsequent decisions rather than a supplement.

4.6 Format (40 CFR 1502.10)

A. Proposed departures from the standard format described in the CEQ regulations and this Chapter must be approved by the OEPC.

B. The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

C. The section listing the distribution of the EIS will also fully describe the consultation and public involvement processes used in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document. The section will also describe the level to which the public contributed usable data for the document.

D. If CEQ's standard format is not used or if the EIS is combined with another planning or decision making document, the section which analyzes and compares the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

4.7 Cover Sheet (40 CFR 1502.11)

The cover sheet will also indicate whether the EIS is intended to serve any other environmental review or consultation requirements pursuant to section 1502.25. The cover sheet will also identify cooperating agencies, the location of the action, and whether the analysis is programmatic in nature.

4.8 Summary (40 CFR 1502.12)

The emphasis in the summary should be on those considerations, controversies, and issues that significantly affect the quality of the human environment.

4.9 Purpose and Need (40 CFR 1502.13)

This section shall present the purpose of and need for the agency action. The purpose and need shall be described in sufficient detail to aid in the development of an appropriate range of alternatives. Care should be taken to ensure an objective presentation and not a justification.

4.10 Alternatives Including the Proposed Action (40 CFR 1502.14)

A. The following terms are commonly used in NEPA compliance activities and are described below for clarification.

(1) *Range of Alternatives*—This term means all reasonable alternatives that will be rigorously explored and objectively evaluated as well as other alternatives that are eliminated from detailed study after providing reasons for their elimination.

(2) *Reasonable Alternatives*—This term means alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(3) *Proposed Action*—This term means the agency activity to be undertaken. It also means a non-Federal entity's planned activity which falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action is generally the earliest known description of the action to be taken. The proposed action is not necessarily, but may become, during the NEPA process, a preferred alternative or an environmentally preferred alternative. The proposed action must be fully and clearly described in order to proceed with NEPA analysis.

(4) *Preferred Alternative*—This term means the alternative which the agency believes would fulfill its statutory mission and responsibilities, while giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(5) *Environmentally Preferred Alternative*—This term means the alternative that will best promote the national environmental policy as expressed in NEPA's Section 101 and can be characterized as causing the least damage to the biological and physical environment and best protect, preserve, and enhance the nation's historic, cultural, and natural resources.

(6) *No Action Alternative*—This term has two interpretations. First "no action" means "no change" from a current management direction or level of management intensity. Second "no action" means "no project" in cases where a new project is proposed for construction. Regardless of the interpretation, the "no action" alternative is required to be analyzed in an EIS.

B. As a general rule, the following guidance will apply:

(1) For internally initiated proposals, *i.e.*, for those cases where the Department conducts or controls the planning process, both the draft and final EIS shall identify the bureau's proposed action.

(2) For externally initiated proposals, *i.e.*, for those cases where the Department is reacting to an application or similar request,

(a) the draft and final EIS shall identify the applicant's proposed action, and

(b) the draft EIS should also identify the bureau's preferred alternative, if one or more exists, and the final EIS should identify the bureau's preferred alternative unless another law prohibits the expression of a preference.

(3) Proposed departures from this guidance must be approved by the OEPC and the Office of the Solicitor.

C. Certain mitigation measures can be clearly integral to the proposed action and its alternatives and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. When this is done, these measures are no longer considered independently with other mitigation. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives where the environmental consequences are distinct and significant enough to warrant separate evaluation.

D. In practicing consensus-based management during the development of an EIS, bureaus should give full consideration to any reasonable alternative(s) put forth by participating interested parties. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, this Departmental Manual part, all applicable Departmental and bureau written policies and guidance.

4.11 Appendix (40 CFR 1502.18)

If an EIS is intended to serve other environmental review or consultation requirements pursuant to section 1502.25, any more detailed information needed to comply with these requirements may be included as an appendix.

4.12 Tiering (40 CFR 1502.20)

A. Tiering is a tool to prevent repetitive discussions and to focus on issues currently before the decision maker. In this process, earlier documents from which later documents are tiered, must be reliable and kept current. Tiered documents must make a finding that conditions described in earlier documents are still in effect or must revise any analyses that are out of date.

B. In some cases, transferring or combining information from previous NEPA documents can be done to reduce repetitive discussions and duplication of effort (see 4.20, below).

C. Bureaus must maintain access to such things as: sources of similar information, examples of tiered and transferred analyses, a set of procedural steps to make the most of tiered and transferred analyses, knowledge of when to use previous material, and how to used tiered and transferred analyses without sacrificing references to original sources.

4.13 Incorporation by Reference (40 CFR 1502.21)

Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

4.14 Incomplete or Unavailable Information (40 CFR 1502.22)

The references to overall costs in this section are not limited to market costs, but include other costs to society such as social costs due to delay.

4.15 Methodology and Scientific Accuracy (40 CFR 1502.24)

Conclusions about environmental effects will be preceded by an analysis that supports that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public. Bureaus will also follow Departmental procedures for information quality as required under Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001.

4.16 Adaptive Management

Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method of management in these cases. Bureaus are encouraged to build adaptive management practice into their proposed actions and NEPA compliance activities and train personnel in this important environmental concept.

4.17 Environmental Review and Consultation Requirements (40 CFR 1502.25)

A. A list of related environmental review and consultation requirements is available from the OEPC (ESM94–14).

B. If the EIS is intended to serve as the vehicle to fully or partially comply with any of these requirements, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports will be referenced or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

C. The draft EIS should list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the fullest extent possible, the environmental analyses for these related permits, licenses, and approvals shall be integrated and performed concurrently. Although all approvals do not need to be in place to complete the NEPA analysis, they do need to be in place before implementing the proposed action. Bureaus shall ensure that they have a process in place to make integrated analyses a standard part of their NEPA compliance efforts.

4.18 Inviting Comments (40 CFR 1503.1)

A. Comments from State agencies will be requested through procedures established by the Governor pursuant to Executive Order 12372, and may be requested from local agencies through these procedures to the extent that they include the affected local jurisdictions.

B. When the proposed action may affect the environment of Indian trust or restricted land or other Indian trust resources, trust assets, or tribal health and safety, comments will be requested from the Indian tribal government unless the Indian tribal government has designated an alternate review process.

C. The comments of other Departmental bureaus and offices must

also be requested. In order to do this, the preparing bureau must furnish copies of the environmental document to the other bureaus in quantities sufficient to allow simultaneous review. Bureaus may be removed from this circulation following consultation with, and concurrence of, a bureau.

4.19 Response to Comments (40 CFR 1503.4)

A. Preparation of a final EIS need not be delayed in those cases where a Federal agency, external to DOI and from which comments are required to be obtained [40 CFR 1503.1(a)(1)], does not comment within the prescribed time period.

B. Informal attempts will be made to determine the status of any late comments and a reasonable attempt should be made to include the comments and a response in the final EIS. As noted in 516 DM 2.2D, the late introduction of new issues and alternatives is to be avoided and they will be considered only to the extent practicable.

C. For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, bureaus will consult with the OEPC when they propose to prepare an abbreviated final EIS [40 CFR 1503.4(c)].

4.20 Elimination of Duplication With State and Local Procedures (40 CFR 1506.2)

Bureaus will incorporate in their appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in Section 102(2)(D) of NEPA. Eligible programs are listed in Appendix 1 to this Chapter.

4.21 Combining Documents (40 CFR 1506.4)

See 516 DM 4.6D.

4.22 Departmental Responsibility (40 CFR 1506.5)

A. Bureaus are responsible for preparation of their environmental documents and independent evaluation of environmental documents prepared by others for a bureau.

B. A contractor may be used to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

4.23 Public Involvement (40 CFR 1506.6)

See 516 DM 1.2, 1.3, 1.6, and 301 DM 2.

4.24 Further Guidance (40 CFR 1506.7)

The OEPC may provide further guidance concerning NEPA pursuant to its organizational responsibilities (112 DM 4) and through supplemental directives (381 DM 4.5B). Current guidance is located in the Environmental Memoranda Series periodically updated by OEPC and available on the OEPC Web site at *http://www.doi.gov/oepc.*

4.25 Proposals for Legislation (40 CFR 1506.8)

The Office of Congressional and Legislative Affairs, in consultation with the OEPC, shall:

A. Identify in the annual submittal to OMB of the Department's proposed legislative program any requirements for, and the status of, any environmental documents.

B. When required, ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

4.26 Time Periods (40 CFR 1506.10)

A. The minimum review period for a draft EIS will be forty-five (45) days from the date of publication by the Environmental Protection Agency (EPA) of the notice of availability.

B. For those ElSs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the OEPC will be responsible for consulting with the EPA and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by the bureaus.

4.27 Emergencies (40 CFR 1506.11)

See subpart 5.8.

CHAPTER 4, APPENDIX 1

Programs of Grants to States and/or Tribes in Which Agencies Having Statewide Jurisdiction May Prepare EISs

1.1 Fish and Wildlife Service

A. Anadromous Fish Conservation (11.405)[7].

B. Fish Restoration (15.605).

C. Wildlife Restoration (15.611).

D. Endangered Species Conservation (15.615).

1.2 National Park Service

A. Historic Preservation Grants-in-Aid (15.904).

B. Outdoor Recreation-Acquisition Development and Planning (15.916).

1.3 Office of Surface Mining

A. Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining (15.250).

B. Abandoned Mine Land Reclamation Program (15.252).

1.4 Office of Insular Affairs

A. Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands (15.875).

Department of the Interior—Departmental Manual

Effective Date:

Series: Environmental Quality.

Part 516: National Environmental Policy Act of 1969.

Chapter 5: Relationship to Decision Making.

Originating Office: Office of Environmental Policy and Compliance.

516 DM 5

5.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to decision making.

5.2 Predecision Referrals to CEQ (40 CFR 1504.3)

A. Upon receipt of advice that another Federal agency intends to refer a Departmental matter to CEQ, the lead bureau will immediately meet with that Federal agency to attempt to resolve the issues raised and expeditiously notify its Assistant Secretary, the Solicitor, and the OEPC.

B. Upon any referral of a Departmental matter to CEQ by another Federal agency, the OEPC will be responsible for coordinating the Department's role with CEQ. The lead bureau will be responsible for developing and presenting the Department's position at CEQ including preparation of briefing papers and visual aids.

5.3 Decision Making Procedures (40 CFR 1505.1)

A. Procedures for decisions by the Secretary/Deputy Secretary are specified in 301 DM 1. Assistant Secretaries should follow a similar process when an environmental document accompanies a proposal for their decision.

B. Bureaus will incorporate in their decision making procedures and NEPA handbooks provisions for consideration of environmental factors and relevant environmental documents. The major decision points for principal programs likely to have significant environmental effects will be identified in the bureau chapters on "Managing the NEPA Process" beginning with Chapter 8 of this Part.

C. Relevant environmental documents, including supplements, will be included as part of the record in formal rulemaking or adjudicatory proceedings.

[7] Citations in parentheses refer to the Catalog of Federal Domestic Assistance. Citations are current as of 2003. The catalog may be viewed at *http://cfda.gov/.*

D. Relevant environmental documents, comments, and responses will accompany proposals through existing review processes so that Departmental officials use them in making decisions.

E. The decision maker will consider the environmental impacts of the alternatives described in any relevant environmental document and the range of these alternatives must encompass the alternatives considered by the decision maker.

F. To the extent practicable, the decision maker will consider other substantive and legal obligations beyond the immediate context of the proposed action.

5.4 Record of Decision (40 CFR 1505.2)

A. Any decision documents prepared pursuant to 301 DM 1 for proposals involving an EIS shall incorporate all appropriate provisions of section 1505.2(b) and (c).

B. If a decision document incorporating these provisions is made available to the public following a decision, it will serve the purpose of a record of decision.

5.5 Implementing the Decision (40 CFR 1505.3)

The terms "monitoring" and "conditions" will be interpreted as being related to factors affecting the quality of the natural and human environment.

5.6 Limitations on Actions (40 CFR 1506.1)

A bureau will immediately notify its Assistant Secretary, the Solicitor, and the OEPC of any situations described in section 1506.1(b).

5.7 Timing of Actions (40 CFR 1506.10)

For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the responsible official will consult with the OEPC before making any request for reducing the time period before a decision or action.

5.8 Emergencies (40 CFR 1506.11)

In the event of an emergency situation, a bureau will immediately take any necessary action to prevent or reduce risks to public health or safety or important resources. If the agency action has significant environmental impacts, a bureau will immediately consult with its Assistant Secretary, the Solicitor, OEPC, and (together with OEPC) CEQ about compliance with NEPA. Upon learning of the emergency situation, the OEPC will immediately notify CEQ. During follow-up activities OEPC and the bureau will jointly be responsible for consulting with CEQ. Paragraph 1506.11 applies only to the emergency and not to any related recovery actions after the emergency has passed. If the agency action does not have significant environmental impacts, a bureau will consult with OPEC to consider any appropriate action.

Department of the Interior—Departmental Manual

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Series: Environmental Quality.
Part 516: National Environmental Policy Act of 1969.
Chapter 6: Managing the NEPA Process.
Originating Office: Office of Environmental Policy and Compliance.

516 DM 6

6.1 Purpose

This Chapter provides supplementary instructions for implementing those provisions of the CEQ Regulations pertaining to procedures for implementing and managing the NEPA process.

6.2 Organization for Environmental Quality

A. *Office of Environmental Policy and Compliance.* The Director, OEPC, reporting to the AS/PMB, is responsible for providing advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with NEPA. (See also 112 DM 4.)

B. *Bureaus and Offices.* Heads of bureaus and offices will designate organizational elements or individuals, as appropriate, at headquarters and regional levels to be responsible for overseeing matters pertaining to the environmental effects of the bureau's plans and programs. The individuals assigned these responsibilities should have management experience or potential, understand the bureau's planning and decision making processes, and be well trained in environmental matters, including the Department's policies and procedures so that their advice has significance in the bureau's planning and decisions. These organizational elements will be identified in chapters 8–15, which contain all bureau NEPA requirements.

6.3 Approval of EISs

A. A program Assistant Secretary is authorized to approve an EIS in those cases where the responsibility for the decision for which the EIS has been prepared rests with the Assistant Secretary or below. The Assistant Secretary may further assign the authority to approve the EIS if he or she chooses. The AS/PMB will make certain that each program Assistant Secretary has adequate safeguards to ensure that the EISs comply with NEPA, the CEQ Regulations, and the Departmental Manual.

B. The AS/PMB is authorized to approve an EIS in those cases where the decision for which the EIS has been prepared will occur at a level in the Department above an individual program Assistant Secretary.

6.4 List of Specific Compliance Responsibilities

A. Bureaus and offices shall:

(1) Prepare NEPA handbooks providing guidance on how to implement NEPA in principal program areas.

(2) Prepare program regulations or directives for applicants.

(3) Propose and apply categorical exclusions.

(4) Prepare and approve EAs.

(5) Decide whether to prepare an EIS.

(6) Prepare and publish NOIs and FONSIs.

(7) Prepare and, when assigned, approve EISs.

B. Assistant Secretaries shall:

(1) Approve bureau and offices handbooks.

(2) Approve regulations or directives for applicants.

(3) Approve proposed categorical exclusions.

(4) Approve EISs pursuant to 516 DM 6.3.

C. The AS/PMB shall:

(1) Concur with regulations or directives for applicants.

(2) Concur with proposed categorical exclusions.

(3) Approve EISs pursuant to 516 DM 6.3.

6.5 Bureau Requirements

A. Requirements specific to bureaus appear as separate chapters beginning with chapter 8 of this part and include the following:

(1) Identification of officials and organizational elements responsible for NEPA compliance.

(2) List of program regulations or directives which provide information to applicants.

(3) Identification of major decision points in principal programs for which an EIS is normally prepared.

(4) List of projects or groups of projects for which an EA is normally prepared.

(5) List of categorical exclusions.

B. Bureau requirements are found in the following chapters for the current bureaus:

(1) Fish and Wildlife Service (chapter 8; formerly appendix 1).

(2) Geological Survey (chapter 9; formerly appendix 2).

(3) Bureau of Indian Affairs (chapter 10; formerly appendix 4).

(4) Bureau of Land Management (chapter 11; formerly appendix 5).

(5) National Park Service (chapter 12; formerly appendix 7).

(6) Office of Surface Mining (chapter 13; formerly appendix 8).

(7) Bureau of Reclamation (chapter 14; formerly appendix 9).

(8) Minerals Management Service (chapter 15; formerly appendix 10).

C. The Office of the Secretary and other Departmental Offices do not have separate chapters but must comply with this Part and will consult with the OEPC about compliance activities.

6.6 Information About the NEPA Process

The OEPC will periodically publish a Departmental list of bureau contacts where information about the NEPA process and the status of EISs may be obtained. This list will be available on OEPC's Web site at *http://www.doi.gov/oepc.*

Department of the Interior—Departmental Manual

Effective Date:

Series: Environmental Quality.

Part 516: National Environmental Policy Act of 1969.

Chapter 7: Review of Environmental Impact Statements and Project Proposals Prepared by Other Federal Agencies.

Originating Office: Office of Environmental Policy and Compliance.

516 DM 7

7.1 Purpose

A. These procedures implement the policy and directives of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852, January 1, 1970, NEPA); Section 2(f) of Executive Order No. 11514 (March 5, 1970); the CEQ Regulations (43 FR 55990, November 28, 1978; CEQ); Bulletin No. 72–6 of the Office of Management and Budget (September 14, 1971); and provide guidance to bureaus and offices of the Department in the review of EISs prepared by and for other Federal agencies.

B. In accordance with 112 DM 4.2F, these procedures further govern the Department's environmental review of non-Interior proposals such as regulations, applications, plans, reports, and other environmental documents which affect the interests of the Department. Such proposals are prepared, circulated, and reviewed under a wide variety of statutes and regulations. These procedures ensure that the Department responds to these review requests with coordinated comments and recommendations under Interior's various authorities.

7.2 Policy

The Department considers it a priority to provide competent and timely review comments on EISs and other environmental or project review documents prepared by other Federal agencies for their major actions which significantly affect the quality of the human environment. All such documents are hereinafter referred to as "environmental review documents." The term "environmental review document" as used in this chapter is separate from and broader than the term "environmental document" found in 40 CFR 1508.10 of the CEQ Regulations. These reviews are predicated on the Department's jurisdiction by law or special expertise with respect to the environmental impact involved and shall provide constructive comments to other Federal agencies to assist them in meeting their environmental responsibilities.

7.3 Responsibilities

A. *The AS/PMB:* Shall be the Department's contact point for the receipt of requests for reviews of environmental review documents prepared by or for other Federal agencies. This authority shall be carried out through the Director, OEPC.

B. *The Director, Office of Environmental Policy and Compliance:*

(1) Shall determine whether such review requests are to be answered by a Secretarial Officer, the Director, OEPC, or by a Regional Environmental Officer, and determine which bureaus and/or offices shall perform such reviews;

(2) Shall prepare, or where appropriate, shall designate a lead bureau responsible for preparing the Department's review comments. The lead bureau may be a bureau, Secretarial office, other Departmental office, or task force and shall be that organizational entity with the most significant jurisdiction or environmental expertise in regard to the requested review;

(3) Shall establish review schedules and target dates for responding to review requests and monitor their compliance;

(4) Shall review, sign, and transmit the Department's review comments to the requesting agency;

(5) Shall consult with the requesting agency on the Department's review comments on an "as needed" basis to ensure resolution of the Department's concerns; and

(6) Shall consult with the Office of Congressional and Legislative Affairs and the Solicitor when environmental reviews pertain to legislative or legal matters, respectively.

C. *The Office of Congressional and Legislative Affairs:* Shall ensure that requests for reviews of environmental review documents prepared by other Federal agencies that accompany or pertain to legislative proposals are immediately referred to the AS/PMB.

D. *Regional Environmental Officers:* When designated by the Director, OEPC, shall review, sign, and transmit the Department's review comments to the requesting agency.

E. *Assistant Secretaries and Heads of Bureaus and Offices:*

(1) Shall designate officials and organizational elements responsible for the coordination and conduct of environmental reviews and report this information to the Director, OEPC;

(2) Shall provide the Director, OEPC, with appropriate information and material concerning their delegated jurisdiction and special expertise in order to assist in assigning review responsibilities;

(3) Shall conduct reviews based upon their areas of jurisdiction or special expertise and provide comments to the designated lead bureau or office assigned responsibilities for preparing Departmental comments;

(4) When designated lead bureau by the Director, OEPC, shall prepare and forward the Department's review comments as instructed;

(5) Shall ensure that review schedules for discharging assigned responsibilities are met and promptly inform other concerned offices if established target dates cannot be met and when they will be met;

(6) Shall provide a single, unified bureau response to the lead bureau, as directed;

(7) Shall ensure that the policies of 516 DM 7.2 regarding competency and timeliness are carried out; and

(8) Shall provide the necessary authority to those designated in E.1 above to carry out all the requirements of 516 DM 7.

7.4 Types of Reviews

A. Descriptions of Proposed Actions

(1) Federal agencies and applicants for Federal assistance may circulate descriptions of proposed actions for the purpose of soliciting information concerning environmental impacts in order to determine whether to prepare EISs. Such descriptions of proposed actions are not substitutes for EISs.

(2) Requests for reviews of descriptions of proposed actions are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

B. Environmental Assessments

(1) EAs are not substitutes for EISs. These assessments or reports may be prepared by Federal agencies, their consultants, or applicants for Federal assistance. They are prepared either to provide information in order to make a finding that there are no significant impacts or that an EIS should be prepared. If they are separately circulated, it is generally for the purpose of soliciting additional information concerning environmental impacts.

(2) Requests for reviews of EAs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. If a bureau requests and OEPC agrees, a control number may be assigned with appropriate instructions. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

C. Findings of No Significant Impact

(1) Findings of No Significant Impact are prepared by Federal agencies to document that there is no need to prepare an EIS. A FONSI is a statement for the record by the proponent Federal agency that it has reviewed the environmental impact of its proposed action (in an EA), that it determines that the action will not significantly affect the quality of the human environment, and that an EIS is not required. Public notice of the availability of such findings shall be announced; however, FONSIs are not normally circulated.

(2) Findings of No Significant Impact are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues.

D. Notices of Intent and Scoping Requests

(1) Notices of intent and scoping requests mark the beginning of the formal review process. Notices of intent are published in the **Federal Register** and announce that an agency plans to prepare an environmental review document under NEPA. Often the NOI and notice of scoping meetings and/or requests are combined into one **Federal Register** notice.

(2) Reviews of notices of intent and scoping requests are processed through the OEPC with instructions to bureaus to comment directly to the requesting agency. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

E. Preliminary, Proposed, or Working Draft Environmental Impact Statements

(1) Preliminary, proposed, or working draft EISs are sometimes prepared and circulated by Federal agencies and applicants for Federal assistance for consultative purposes.

(2) Requests for reviews of these types of draft EISs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

F. Draft Environmental Impact Statements

(1) Draft EISs are prepared by Federal agencies under the provisions of Section 102(2)(C) of NEPA and provisions of the CEQ Regulations. They are filed with the EPA and officially circulated to other Federal, State, and local agencies [see 40 CFR 1503.1(a)] for review based upon their jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action [see 7.5A(1)].

(2) All requests from other Federal agencies for review of draft EISs shall be made through the Director, OEPC. Review comments shall be handled in accordance with the provisions of this chapter and guidance memoranda may be issued and updated by the OEPC.

G. Final Environmental Impact Statements

(1) Final EISs are prepared by Federal agencies following receipt and consideration of review comments. They are filed with the EPA and are circulated to the public for an administrative waiting period of thirty days and sometimes for comment.

(2) The Director, OEPC, shall review final EISs to determine whether they reflect adequate consideration of the Department's comments. Bureaus and offices shall not comment independently on final EISs, but shall inform the Director, OEPC, of their views. Any review comments shall be handled in accordance with the instructions of the OEPC.

H. License and Permit Applications

(1) The Department receives draft and final environmental review documents associated with applications for other Federal licenses and permits. This activity largely involves the regulatory program of the Corps of Engineers and the hydroelectric and natural gas pipeline licensing programs of the Federal Energy Regulatory Commission.

(2) Environmental review of applications is generally handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC Web site and consult with the OEPC for the most current review guidance.

(3) While review of NEPA compliance documents associated with Corps of Engineers permit applications is managed in accordance with this Chapter, review of Corps of Engineers permit applications is managed in accordance with 503 DM 1. Reviewers are referred to that Manual Part and to 7.5C.(3) below for the processing of concurrent reviews.

I. Project Plans and Reports Without Associated Environmental Review Documents

(1) The Department receives draft and final project plans and reports under various authorities which do not have environmental review documents circulated with them. This may be because NEPA compliance has been completed, will be completed on a slightly different schedule, NEPA does not apply, or other reasons.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to

efficiently manage this activity. Bureau reviewers should review information on the OEPC Web site and consult with the OEPC for the most current review guidance.

J. Federal Regulations

(1) The Department circulates and controls the review of advance notices of proposed rulemaking, proposed rulemaking, and final rulemaking which are environmental in nature, may impact the quality of the human environment, and may impact the Department's natural resources and programs.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC Web site and consult with the OEPC for the most current review guidance.

K. Documents Prepared Pursuant to Other Environmental Statutes

(1) The Department receives draft and final project plans prepared pursuant to other environmental statutes [*e.g.*, National Historic Preservation Act (NHPA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA)], which may not have environmental review documents circulated with them.

(2) Environmental review of these documents is handled consistently with the policies and provisions of this part, and in accordance with further guidance from the Director, OEPC. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC Web site and consult with the OEPC for the most current review guidance.

L. Section 4(f) Documents

(1) Under Section 4(f) of the Department of Transportation Act, the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(2) Environmental review of Section 4(f) documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC Web site and consult with the OEPC for the most current review guidance.

7.5 Content of Comments on Environmental Review Documents

A. Departmental Comments

(1) Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the agency mission, related program experience, or environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise.

(2) Reviews shall be conducted in sufficient detail to ensure that both potentially beneficial and adverse environmental effects of the proposed action and alternatives, including cumulative and secondary effects, are adequately identified. Wherever possible, and within the Department's competence and resources, other agencies will be advised on ways to avoid or minimize adverse impacts of the proposed action and alternatives, and on alternatives to the proposed action that may have been overlooked or inadequately treated.

(3) Review comments should not capsulate or restate the environmental review document, but should provide clear, concise, substantive, fully justified, and complete comments on the stated or unstated environmental impacts of the proposed action and, if appropriate, on alternatives to the action. Comments, either positive or negative, shall be objective and constructive.

(4) Departmental review comments shall be organized as follows:

(a) *Control Number.* The Departmental review control number shall be typed in the upper left hand corner below the Departmental seal on the letterhead page of the comments.

(b) *Introduction.* The introductory paragraph shall reference the other Federal agency's review request, including the date, the type of review requested, the subject of the review; and, where appropriate, the geographic location of the subject and the other agency's control number.

(c) *General Comments, if any.* This section will include those comments of a general nature and those which occur throughout the review which ought to be consolidated in order to avoid needless repetition.

(d) *Detailed Comments.* The format of this section shall follow the organization of the other agency's environmental review document. These comments shall not comment on the proposed actions of other Federal agencies, but shall constructively and objectively comment on the statement's adequacy in describing the environmental impacts of the action, the alternatives, and the impacts of the alternatives. Comments shall specify any corrections, additions, or other changes required to make the statement adequate.

(e) *Summary Comments, if any.* In general, the Department will not take a position on the proposed action of another Federal agency, but will limit its comments to those above. However, in those cases where the Department has jurisdiction by statute, executive order, memorandum of agreement, or other authority, the Department may comment on the proposed action. These comments shall be provided in this section and may take the form of support for, concurrence with, concern over, or objection to the proposed action and/or the alternatives.

B. Bureau and Office Comments

Bureau and office reviews of EISs prepared by other Federal agencies are considered informal inputs to the Department's comments and their content will generally conform to paragraph 7.5A of this chapter with the substitution of the bureau's or office's delegated jurisdiction or special environmental expertise for that of the Department.

C. Relationship to Other Concurrent Reviews

(1) Where the Department, because of other authority or agreement, is concurrently requested to review a proposal as well as its EIS, the Department's comments on the proposal shall be separately identified and placed in front of the comments on the EIS. A summary of the Department's position, if any, on the proposal and its environmental impact shall be separately identified and follow the review comments on the EIS.

(2) Where another Federal agency elects to combine other related reviews into the review of the EIS by including additional or more specific information into the statement, the introduction to the Department's review comments will acknowledge the additional review request and the review comments will be incorporated into appropriate parts of the combined statement review. A summary of the Department's position, if any, on the environmental impacts of the proposal and any alternatives shall be separately identified and follow the detailed review comments on the combined statement.

(3) In some cases, the concurrent review is not an integral part of the environmental compliance review but is being processed within the same general time period as the environmental review. If there is also an environmental review being processed by the OEPC, there is potential for two sets of conflicting comments to reach the requesting agency. Bureaus must recognize that this possibility exists and must check with the Regional Environmental Officer to determine the status of any environmental review prior to forwarding the concurrent review comments to the requesting agency. Any conflicts must be resolved before the separate comments may be filed. One review may be held up pending completion of the concurrent review and consideration of filing a single comment letter. A time extension may be necessary and must be obtained if a review is to be held up pending completion of a concurrent review.

(4) The Department's intervention in another agency's adjudicatory process is also a concurrent review. Such reviews are governed by 452 DM 2 which must be consulted in applicable cases. The most common cases involve the Department's review of hydroelectric and natural gas applications of the Federal Energy Regulatory Commission. In these cases, it is recommended that bureaus consult frequently with the appropriate attorney of record in the Office of the Solicitor.

7.6 Availability of Review Comments

A. Prior to the public availability of another Federal agency's final EIS, the Department shall not independently release to the public its comments on that agency's draft EIS. In accordance with section 1506.6(f) of the CEQ Regulations, the agency that prepared the statement is responsible for making the comments available to the public, and requests for copies of the Department's comments shall be referred to that agency. Exceptions to this procedure shall be made by the OEPC and the Office of the Solicitor.

B. The availability of various internal Departmental memoranda, such as the review comments of bureaus, offices, task forces, and individuals, which are used as inputs to the Department's review comments is governed by the Freedom of Information Act (5 U.S.C. 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in A., the responsible bureau or office shall notify and consult their bureau Freedom of Information Act Officer and the OEPC to coordinate any responses.

7.7 Procedures for Processing Environmental Reviews

A. General Procedures

(1) All requests for reviews of environmental review documents prepared by or for other Federal agencies shall be received and controlled by the Director, OEPC.

(2) If a bureau or office, whether at headquarters or field level, receives an environmental review document for review directly from outside of the Department, it should ascertain whether the document is a preliminary, proposed, or working draft circulated for technical assistance or input in order to prepare a draft document or whether the document is in fact a draft environmental review document being circulated for official review.

(a) If the document is a preliminary, proposed, or working draft, the bureau or office should handle independently and provide whatever technical assistance possible, within the limits of their resources, to the requesting agency. The response should clearly indicate the type of assistance being provided and state that it does not represent the Department's review of the document. Each bureau or office should provide the Regional Environmental Officer and the Director, OEPC, copies of any comments involving significant or controversial issues.

(b) If the document is a draft or final environmental review document circulated for official review, the bureau or office should inform the requesting agency of the Department's procedures in subparagraph (1) above and promptly refer the request and the document to the Director, OEPC, for processing.

(3) All bureaus and offices processing and reviewing environmental review documents of other Federal agencies will do so within the time limits specified by the Director, OEPC. From thirty (30) to forty-five (45) days are normally available for responding to other Federal agency review requests. Whenever possible the Director, OEPC, shall seek a forty-five (45) day review period. Further extensions shall be handled in accordance with paragraph 7.7B (3) of this chapter.

(4) The Department's review comments on other Federal agencies' environmental review documents shall reflect the full and balanced interests of the Department in the protection and enhancement of the environment. Lead bureaus shall be responsible for resolving any intra-Departmental differences in bureau or office review comments submitted to them. The OEPC is available for guidance and assistance in this regard. In cases where agreement cannot be reached, the matter shall be referred through channels to the AS/PMB with attempts to resolve the disagreement at each intervening management level. The OEPC will assist in facilitating this process.

B. Processing Environmental Reviews

(1) The OEPC shall secure and distribute sufficient copies of environmental review documents for Departmental review. Bureaus and offices should keep the OEPC informed as to their needs for review copies, which shall be kept to a minimum, and shall develop internal procedures to efficiently and expeditiously distribute environmental review documents to reviewing offices.

(2) Reviewing bureaus and offices which cannot meet the review schedule shall so inform the lead bureau and shall provide the date that the review will be delivered. The lead bureau shall inform the OEPC in cases of headquarters-level response, or the Regional Environmental Officer in cases of field-level response, if it cannot meet the schedule, why it cannot, and when it will. The OEPC or the Regional Environmental Officer shall be responsible for informing the other Federal agency of any changes in the review schedule.

(3) Reviewing offices shall route their review comments through channels to the lead bureau, with a copy to the OEPC. When, in cases, of headquarters-level response, review comments cannot reach the lead bureau within the established review schedule, reviewing bureaus and offices shall send a copy marked "Advance Copy" directly to the lead bureau. Review comments shall also be sent to the lead bureau by electronic means to facilitate meeting the requesting agency's deadline.

(4) In cases of headquarters-level response:

(a) The lead bureau shall route the completed comments through channels

to the OEPC in both paper copy and electronic word processor format. Copies shall be prepared and attached for all bureaus and offices from whom review comments were requested, for the OEPC, and for the Regional Environmental Officer when the review pertains to a project within a regional jurisdiction. In addition, original copies of all review comments received or documentation that none were provided shall accompany the Department's comments through the clearance process and shall be retained by the OEPC.

(b) The OEPC shall review, secure any necessary additional surnames, surname, and either sign the Department's comments or transmit the Department's comments to another appropriate Secretarial Officer for signature. Upon signature, the OEPC shall transmit the comments to the requesting agency.

(5) In cases of field-level response:

(a) The lead bureau shall provide the completed comments to the appropriate Regional Environmental Officer in both paper-copy and electronic word processor format. In addition, original copies of all review comments received or documentation that none were provided shall be attached to the paper copy.

(b) The Regional Environmental Officer shall review, sign, and transmit the Department's comments to the agency requesting the review. In addition they shall reproduce and send the Department's comments to the regional bureau reviewers. The entire completed package including the bureau review comments shall be sent to the OEPC for recording and filing.

(c) If the Regional Environmental Officer determines that the review involves policy matters of Secretarial significance, they shall not sign and transmit the comments as provided in subparagraph (b) above, but shall forward the review to the OEPC in headquarters for final disposition.

C. Referrals of Environmentally Unsatisfactory Proposals to the Council on Environmental Quality

(1) Referral to CEQ is a formal process provided for in the CEQ Regulations (40 CFR 1504). It is used sparingly and only when all other administrative processes have been exhausted in attempting to resolve issues between the project proponent and one or more other Federal agencies. These issues must meet certain criteria (40 CFR 1504.2), and practice has shown that these issues generally involve resource concerns of national importance to the Department.

(2) A bureau or office intending to recommend referral of a proposal to CEQ must, at the earliest possible time, advise the proponent Federal agency that it considers the proposal to be a possible candidate for referral. If not expressed at an earlier time, this advice must be outlined in the Department's comments on the draft EIS.

(3) CEQ referral is a high level activity that must be conducted in an extremely short time frame. A referring bureau or office has 25 days after EPA has published a notice of availability of the final EIS in the **Federal Register** in which to file the referral unless an extension is granted per 40 CFR 1504.3(b). The referral documents must be signed by the Secretary of the Interior.

(4) Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should review information on the OEPC Web site at *http://www.doi.gov/oepc* and consult with the OEPC for the most current review guidance.

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Federal Register

Monday,
March 8, 2004

Part IV

The President

Executive Order 13332—Further Adjustment of Certain Rates of Pay

Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

Presidential Documents

Title 3—

The President

Executive Order 13332 of March 3, 2004

Further Adjustment of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, as amended by section 1125 of Public Law 108–136, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive and Certain Other Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), section 140 of Public Law 97–92, and Public Law 108–167) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601(a)–(b) of Public Law 108–136, the rates of monthly basic pay (37 U.S.C. 203) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

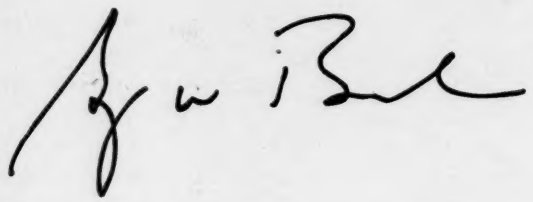
(a) Pursuant to section 5304 of title 5, United States Code, and in accordance with section 640(a) of Division F of Public Law 108–199, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* The rates of pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective on January 1, 2004. The other schedules contained herein are effective on the first day of the first pay period beginning on or after January 1, 2004.

Sec. 8. *Prior Order Superseded.* Executive Order 13322 of December 30, 2003, is superseded.



THE WHITE HOUSE,
March 3, 2004.

Billing code 3195–01–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

	1	2	3	4	5	6	7	8	9	10
GS-1	$15,625	$16,146	$16,666	$17,183	$17,703	$18,009	$18,521	$19,039	$19,060	$19,543
GS-2	17,568	17,985	18,567	19,060	19,274	19,841	20,408	20,975	21,542	22,109
GS-3	19,168	19,807	20,446	21,085	21,724	22,363	23,002	23,641	24,280	24,919
GS-4	21,518	22,235	22,952	23,669	24,386	25,103	25,820	26,537	27,254	27,971
GS-5	24,075	24,878	25,681	26,484	27,287	28,090	28,893	29,696	30,499	31,302
GS-6	26,836	27,731	28,626	29,521	30,416	31,311	32,206	33,101	33,996	34,891
GS-7	29,821	30,815	31,809	32,803	33,797	34,791	35,785	36,779	37,773	38,767
GS-8	33,026	34,127	35,228	36,329	37,430	38,531	39,632	40,733	41,834	42,935
GS-9	36,478	37,694	38,910	40,126	41,342	42,558	43,774	44,990	46,206	47,422
GS-10	40,171	41,510	42,849	44,188	45,527	46,866	48,205	49,544	50,883	52,222
GS-11	44,136	45,607	47,078	48,549	50,020	51,491	52,962	54,433	55,904	57,375
GS-12	52,899	54,662	56,425	58,188	59,951	61,714	63,477	65,240	67,003	68,766
GS-13	62,905	65,002	67,099	69,196	71,293	73,390	75,487	77,584	79,681	81,778
GS-14	74,335	76,813	79,291	81,769	84,247	86,725	89,203	91,681	94,159	96,637
GS-15	87,439	90,354	93,269	96,184	99,099	102,014	104,929	107,844	110,759	113,674

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$87,439	$70,851	$57,410	$46,519	$37,694	$33,697	$30,124	$26,930	$24,075
2	90,062	72,977	59,132	47,915	38,825	34,708	31,028	27,738	24,797
3	92,764	75,166	60,906	49,352	39,990	35,749	31,959	28,570	25,541
4	95,547	77,421	62,733	50,833	41,189	36,822	32,917	29,427	26,307
5	98,413	79,743	64,615	52,358	42,425	37,926	33,905	30,310	27,097
6	101,366	82,136	66,554	53,928	43,698	39,064	34,922	31,219	27,910
7	104,407	84,600	68,551	55,546	45,009	40,236	35,970	32,156	28,747
8	107,539	87,138	70,607	57,213	46,359	41,443	37,049	33,121	29,609
9	110,765	89,752	72,725	58,929	47,750	42,686	38,160	34,114	30,497
10	113,674	92,444	74,907	60,697	49,182	43,967	39,305	35,138	31,412
11	113,674	95,218	77,154	62,518	50,658	45,286	40,484	36,192	32,355
12	113,674	98,074	79,469	64,393	52,177	46,645	41,699	37,277	33,325
13	113,674	101,017	81,853	66,325	53,743	48,044	42,950	38,396	34,325
14	113,674	104,047	84,309	68,315	55,355	49,485	44,238	39,548	35,355

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Deputy Under Secretary for Health	$148,495	**
Associate Deputy Under Secretary for Health	142,230	***
Assistant Under Secretaries for Health	138,037	***

	Minimum	Maximum	
Medical Directors	$117,774	$133,481	***
Service Directors	102,549	127,359	
Director, National Center for Preventive Health	87,439	127,359	

Physician and Dentist Schedule

Director Grade	$102,549	$127,359
Executive Grade	94,694	120,684
Chief Grade	87,439	113,674
Senior Grade	74,335	96,637
Intermediate Grade	62,905	81,778
Full Grade	52,899	68,766
Associate Grade	44,136	57,375

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$87,439	$113,674
Senior Grade	74,335	96,637
Intermediate Grade	62,905	81,778
Full Grade	52,899	68,766
Associate Grade	44,136	57,375

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$87,439	$113,674
Assistant Director Grade	74,335	96,637
Chief Grade	62,905	81,778
Senior Grade	52,899	68,766
Intermediate Grade	44,136	57,375
Full Grade	36,478	47,422
Associate Grade	31,390	40,804
Junior Grade	26,836	34,891

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $136,900.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $128,200.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System.	$104,927	$158,100
Agencies without a Certified SES Performance Appraisal System.	$104,927	$145,600

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Level I	$175,700
Level II	158,100
Level III.	145,600
Level IV	136,900
Level V	128,200

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Vice President	$203,000
Senators	158,100
Members of the House of Representatives.	158,100
Delegates to the House of Representatives.	158,100
Resident Commissioner from Puerto Rico	158,100
President pro tempore of the Senate.	175,700
Majority leader and minority leader of the Senate.	175,700
Majority leader and minority leader of the House of Representatives	175,700
Speaker of the House of Representatives.	203,000

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004

Chief Justice of the United States	$203,000
Associate Justices of the Supreme Court.	194,300
Circuit Judges	167,600
District Judges.	158,100
Judges of the Court of International Trade	158,100

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES
(Effective on January 1, 2004)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
COMMISSIONED OFFICERS															
O-10 **	-	-	-	-	-	-	-	-	-	-	-	$12,524.70*	$12,586.20*	$12,847.80*	$13,303.80*
O-9	-	-	-	-	-	-	-	-	-	-	-	10,954.50	11,112.30	11,340.30	11,738.40
O-8	$7,751.10	$8,004.90	$8,173.20	$8,220.60	$8,430.30	$8,781.90	$8,863.50	$9,197.10	$9,292.80	$9,579.90	$9,995.70	10,379.10	10,635.30	10,635.30	10,635.30
O-7	6,440.70	6,739.80	6,878.40	6,988.50	7,187.40	7,384.20	7,611.90	7,839.00	8,066.70	8,781.90	9,386.10	9,386.10	9,386.10	9,386.10	9,433.50
O-6	4,773.60	5,244.30	5,588.40	5,588.40	5,609.70	5,850.00	5,882.10	5,882.10	6,216.30	6,807.30	7,154.10	7,500.90	7,698.30	7,897.80	8,285.40
O-5	3,979.50	4,482.90	4,793.40	4,851.60	5,044.80	5,161.20	5,415.90	5,602.80	5,844.00	6,213.60	6,389.70	6,563.40	6,760.80	6,760.80	6,760.80
O-4	3,433.50	3,974.70	4,239.90	4,299.00	4,545.30	4,809.30	5,137.80	5,394.00	5,571.60	5,673.60	5,733.00	5,733.00	5,733.00	5,733.00	5,733.00
O-3 ***	3,018.90	3,422.40	3,693.90	4,027.20	4,220.10	4,431.60	4,568.70	4,794.30	4,911.30	4,911.30	4,911.30	4,911.30	4,911.30	4,911.30	4,911.30
O-2 ***	2,608.20	2,970.60	3,421.50	3,537.00	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90	3,609.90
O-1 ***	2,264.40	2,356.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50	2,848.50
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER AND/OR WARRANT OFFICER**															
O-3E	-	-	-	$4,027.20	$4,220.10	$4,431.60	$4,568.70	$4,794.30	$4,984.20	$5,092.80	$5,241.30	$5,241.30	$5,241.30	$5,241.30	$5,241.30
O-2E	-	-	-	3,537.00	3,609.90	3,724.80	3,918.60	4,068.60	4,180.20	4,180.20	4,180.20	4,180.20	4,180.20	4,180.20	4,180.20
O-1E	-	-	-	2,848.50	3,042.30	3,154.50	3,269.40	3,382.20	3,537.00	3,537.00	3,537.00	3,537.00	3,537.00	3,537.00	3,537.00

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $12,133.20 per month:

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in section 161(c) of title 10, United States Code), basic pay for this grade is calculated to be $14,634.20 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $12,133.20 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with more than 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
WARRANT OFFICERS															
W-5	-	-	-	-	-	-	-	-	-	-	-	$5,360.70	$5,544.30	$5,728.80	$5,914.20
W-4	$3,119.40	$3,355.80	$3,452.40	$3,547.20	$3,710.40	$3,871.50	$4,035.00	$4,194.30	$4,359.00	$4,617.30	$4,782.60	4,944.30	5,112.00	5,277.00	5,445.90
W-3	2,848.80	2,967.90	3,089.40	3,129.30	3,257.10	3,403.20	3,595.80	3,786.30	3,988.80	4,140.60	4,291.80	4,356.90	4,424.10	4,570.20	4,716.30
W-2	2,505.90	2,649.00	2,774.10	2,865.30	2,943.30	3,157.80	3,321.60	3,443.40	3,562.20	3,643.80	3,712.50	3,843.00	3,972.60	4,103.70	4,103.70
W-1	2,212.80	2,394.00	2,515.20	2,593.50	2,802.30	2,928.30	3,039.90	3,164.70	3,247.20	3,321.90	3,443.70	3,535.80	3,535.80	3,535.80	3,535.80
ENLISTED MEMBERS															
E-9 *	-	-	-	-	-	-	$3,769.20	$3,854.70	$3,962.40	$4,089.30	$4,216.50	$4,421.10	$4,594.20	$4,776.60	$5,054.70
E-8	-	-	-	-	-	$3,085.50	3,222.00	3,306.30	3,407.70	3,517.50	3,715.50	3,815.70	3,986.40	4,081.20	4,314.30
E-7	$2,145.00	$2,341.20	$2,430.60	$2,549.70	$2,642.10	2,801.40	2,891.10	2,980.20	3,139.80	3,219.60	3,295.50	3,341.70	3,498.00	3,599.10	3,855.00
E-6	1,855.50	2,041.20	2,131.20	2,218.80	2,310.00	2,516.10	2,596.20	2,685.30	2,763.30	2,790.90	2,809.80	2,809.80	2,809.80	2,809.80	2,809.80
E-5	1,700.10	1,813.50	1,901.10	1,991.10	2,130.60	2,250.90	2,339.70	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90	2,367.90
E-4	1,558.20	1,638.30	1,726.80	1,814.10	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50	1,891.50
E-3	1,407.00	1,495.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50	1,585.50
E-2	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70	1,337.70
E-1 **	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40	1,193.40
E-1 ***	1,104.00	-	-	-	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $6,090.90 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $792.60.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

Locality Pay Area[1]	Rate
Atlanta, GA	12.61%
Boston-Worcester-Lawrence, MA-NH-ME-CT-RI	16.99%
Chicago-Gary-Kenosha, IL-IN-WI	18.26%
Cincinnati-Hamilton, OH-KY-IN	15.07%
Cleveland-Akron, OH	13.14%
Columbus, OH	13.14%
Dallas-Fort Worth, TX	13.85%
Dayton-Springfield, OH	12.03%
Denver-Boulder-Greeley, CO	16.66%
Detroit-Ann Arbor-Flint, MI	18.32%
Hartford, CT	17.87%
Houston-Galveston-Brazoria, TX	23.14%
Huntsville, AL	11.49%
Indianapolis, IN	11.11%
Kansas City, MO-KS	11.54%
Los Angeles-Riverside-Orange County, CA	20.05%
Miami-Fort Lauderdale, FL	15.54%
Milwaukee-Racine, WI	12.64%
Minneapolis-St. Paul, MN-WI	14.75%
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA	19.29%
Orlando, FL	10.93%
Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD	15.32%
Pittsburgh, PA	11.92%
Portland-Salem, OR-WA	14.69%
Richmond-Petersburg, VA	12.13%
Sacramento-Yolo, CA	15.18%
St. Louis, MO-IL	11.27%
San Diego, CA	16.16%
San Francisco-Oakland-San Jose, CA	24.21%
Seattle-Tacoma-Bremerton, WA	15.12%
Washington-Baltimore, DC-MD-VA-WV	14.63%
Rest of U.S.	10.90%

SCHEDULE 10 ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2004)

AL-3/A	$91,200
AL-3/B	98,100
AL-3/C	105,200
AL-3/D	112,200
AL-3/E	119,200
AL-3/F	126,100
AL-2	133,300
AL-1	136,900

[1]Locality Pay Areas are defined in 5 CFR 531.603.

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Federal Register
Vol. 69, No. 45
Monday, March 8, 2004

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FEDERAL REGISTER PAGES AND DATE, MARCH

9515–9742	1
9743–9910	2
9911–10130	3
10131–10312	4
10313–10594	5
10595–10900	8

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6867 (Amended by Proc. 7757) 9515
7757 9515
7758 10131
7759 10593
Executive Orders:
13288 (Continued by Notice of March 2, 2004 10313
13322 (Superseded by EO 13332) 10891
13331 9911
13332 10891
Administrative Orders:
Presidential Determinations:
No. 2004–23 of February 25, 2004 9915
No. 2004–24 of February 25, 2004 9917
No. 2004–25 of February 26, 2004 10595
Memorandums:
Memorandum of March 1, 2004 10133
Memorandum of March 3, 2004 10597
Notices:
March 2, 2004 10313

5 CFR

300 10152
890 9919

7 CFR

301 10599
319 9743
400 9519
457 9519
701 10300
783 9744
906 10135
1230 9924
Proposed Rules:
16 10354
319 9976
1000 9763
1001 9763
1005 9763
1006 9763
1007 9763
1030 9763
1032 9763
1033 9763
1124 9763
1126 9763
1131 9763

8 CFR

Proposed Rules:
208 10620
212 10620
1003 10627
1208 10627
1212 10627
1240 10627

9 CFR

71 10137
78 9747
93 9749
Proposed Rules:
93 10633
94 10633
95 10633

12 CFR

220 10601
229 10602
741 9926

14 CFR

21 10315
29 10315
39 ..... 9520, 9521, 9523, 9526, 9750, 9927, 9930, 9932, 9934, 9936, 9941, 10317, 10319, 10321
71 ..... 10103, 10324, 10325, 10326, 10327, 10328, 10329, 10330, 10331, 10603, 10604, 10605, 10606, 10608, 10609, 10610, 10611, 10612
95 10612
97 10614
Proposed Rules:
39 ..... 10179, 10357, 10360, 10362, 10364, 10364, 10366, 10369, 10370, 10372, 10374, 10375, 10378, 10379, 10381, 10383, 10385, 10387, 10636, 10638, 10641
71 10389

16 CFR

304 9943

17 CFR

210 9722
228 9722
229 9722
240 9722
249 9722
270 9722
274 9722
Proposed Rules:
270 9726

19 CFR

122 10151

21 CFR

520 ..... 9753, 9946

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 8, 2004

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Federal-State Joint Board on Universal Service—
  - Universal Service Fund and Telecommunications Relay Services Fund; accounting and auditing standards; published 2-6-04
- Satellite communications—
  - Portable earth-station tranceivers and out-of-band emmission limits for mobile earth stations; equipment authorization; published 2-6-04

Radio stations; table of assignments:
- Kansas; published 2-10-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:
- Class II devices—
  - Arrhythmia detector and alarm; reclassification and special controls; correction; published 3-8-04

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:
- Mississippi; published 3-4-04
- New York; published 3-1-04
- Washington; published 2-11-04

Navigation aids:
- Alternatives to incandescent lights and standards for new lights in private aids; published 12-8-03

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright Arbitration Royalty Panel rules and procedures:
- Sound recordings and ephemeral recordings; digital performance right; rates and terms; published 2-6-04

LIBRARY OF CONGRESS

Copyright Arbitration Royalty Panel rules and procedures:
- Sound recordings and ephemeral recordings; digital performance right; rates and terms
  - Correction; published 2-26-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Standard instrument approach procedures; published 3-8-04

VETERANS AFFAIRS DEPARTMENT

Organization, functions, and authority delegations:
- Property management contractor; published 3-8-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in—
- Oregon and Washington; comments due by 3-16-04; published 1-16-04 [FR 04-01004]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:
- Business and industry loans; tangible balance sheet equity; comments due by 3-16-04; published 1-16-04 [FR 04-00979]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Skates; comments due by 3-19-04; published 3-4-04 [FR 04-04871]
- Atlantic highly migratory species—
  - Pelagic longline fishery; sea turtle bycatch and bycatch mortality reduction measures; comments due by 3-15-04; published 2-11-04 [FR 04-02982]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Vermilion snapper; comments due by 3-15-04; published 2-13-04 [FR 04-03281]
- Northeastern United States fisheries—
  - Atlantic sea scallop; comments due by 3-15-04; published 1-16-04 [FR 04-01012]

CONSUMER PRODUCT SAFETY COMMISSION

Federal Hazardous Substances Act:
- Baby bath seats; requirements; comments due by 3-15-04; published 12-29-03 [FR 03-31135]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:
- U.S.-Chile and U.S.-Singapore Free Trade Agreements; implementation; comments due by 3-15-04; published 1-13-04 [FR 04-00568]

Federal Acquisition Regulation (FAR):
- Commercially available off-the-shelf items; comments due by 3-15-04; published 1-15-04 [FR 04-00852]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Pulp and paper industry; comments due by 3-18-04; published 2-17-04 [FR 04-03369]

Air pollution; standards of performance for new stationary sources:
- Commercial or industrial solid waste incineration units; comments due by 3-18-04; published 2-17-04 [FR 04-03366]

Air programs:
- Outer Continental Shelf regulations—
  - California; consistency update; comments due by 3-15-04; published 2-12-04 [FR 04-03079]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-15-04; published 2-12-04 [FR 04-03077]
- Florida; comments due by 3-15-04; published 2-13-04 [FR 04-03074]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste:
- Low-level radioactive waste; management and disposal; comments due by 3-17-04; published 11-18-03 [FR 03-28651]

Solid Waste:
- Products containing recovered materials; comprehensive procurement guideline; comments due by 3-19-04; published 2-18-04 [FR 04-03449]

Solid wastes:
- Hazardous waste; identification and listing—
  - Solvent-contaminated reusable shop towels, rags, disposable wipes, and paper towels; conditional exclusion; comments due by 3-19-04; published 1-30-04 [FR 04-01972]

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 3-19-04; published 2-18-04 [FR 04-03368]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:
- Kansas; comments due by 3-15-04; published 2-10-04 [FR 04-02832]

Television broadcasting:
- UHF television discount; comments due by 3-19-04; published 2-27-04 [FR 04-04391]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Commercially available off-the-shelf items; comments

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 743/P.L. 108–203

Social Security Protection Act of 2004 (Mar. 2, 2004; 118 Stat. 493)

S. 523/P.L. 108–204

Native American Technical Corrections Act of 2004 (Mar. 2, 2004; 118 Stat. 542)

Last List March 2, 2004

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Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4]Jan. 1, 2004
3 (2002 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–052–00003–5)	10.00	Jan. 1, 2004
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End	(869–050–00006–7)	58.00	Jan. 1, 2003
6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–050–00018–1)	29.00	[4] Jan. 1, 2003
1940–1949	(869–050–00019–9)	47.00	Jan. 1, 2003
1950–1999	(869–052–00021–3)	46.00	Jan. 1, 2004
*2000–End	(869–052–00022–1)	50.00	Jan. 1, 2004
8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
1–199	(869–050–00023–7)	58.00	Jan. 1, 2003
200–End	(869–052–00025–6)	58.00	Jan. 1, 2004
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
*200–499	(869–052–00028–1)	46.00	Jan. 1, 2004
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Feb. 3, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–052–00033–7)	61.00	Jan. 1, 2004
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
*1–59	(869–052–00039–6)	63.00	Jan. 1, 2004
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
*200–1199	(869–052–00042–6)	50.00	Jan. 1, 2004
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–050–00050–4)	58.00	Apr. 1, 2003
240–End	(869–050–00051–2)	62.00	Apr. 1, 2003
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
1–399	(869–050–00057–1)	50.00	Apr. 1, 2003
400–499	(869–050–00058–0)	63.00	Apr. 1, 2003
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–050–00061–0)	47.00	Apr. 1, 2003
170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–050–00065–2)	47.00	Apr. 1, 2003
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–050–00067–9)	58.00	Apr. 1, 2003
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–050–00069–5)	62.00	Apr. 1, 2003
300–End	(869–050–00070–9)	44.00	Apr. 1, 2003
23	(869–050–00071–7)	44.00	Apr. 1, 2003
24 Parts:			
0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–050–00076–8)	30.00	Apr. 1, 2003
25	(869–050–00077–6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
500-599	(869-050-00096-2)	12.00	[5]Apr. 1, 2003
600-End	(869-050-00097-1)	17.00	Apr. 1, 2003
27 Parts:			
1-199	(869-050-00098-9)	63.00	Apr. 1, 2003
200-End	(869-050-00099-7)	25.00	Apr. 1, 2003
28 Parts:			
0-42	(869-050-00100-4)	61.00	July 1, 2003
43-End	(869-050-00101-2)	58.00	July 1, 2003
29 Parts:			
0-99	(869-050-00102-1)	50.00	July 1, 2003
100-499	(869-050-00103-9)	22.00	July 1, 2003
500-899	(869-050-00104-7)	61.00	July 1, 2003
900-1899	(869-050-00105-5)	35.00	July 1, 2003
1900-1910 (§§ 1900 to 1910.999)	(869-050-00106-3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869-050-00107-1)	46.00	July 1, 2003
1911-1925	(869-050-00108-0)	30.00	July 1, 2003
1926	(869-050-00109-8)	50.00	July 1, 2003
1927-End	(869-050-00110-1)	62.00	July 1, 2003
30 Parts:			
1-199	(869-050-00111-0)	57.00	July 1, 2003
200-699	(869-050-00112-8)	50.00	July 1, 2003
700-End	(869-050-00113-6)	57.00	July 1, 2003
31 Parts:			
0-199	(869-050-00114-4)	40.00	July 1, 2003
200-End	(869-050-00115-2)	64.00	July 1, 2003
32 Parts:			
1-39, Vol. I		15.00	[2]July 1, 1984
1-39, Vol. II		19.00	[2]July 1, 1984
1-39, Vol. III		18.00	[2]July 1, 1984
1-190	(869-050-00116-1)	60.00	July 1, 2003
191-399	(869-050-00117-9)	63.00	July 1, 2003
400-629	(869-050-00118-7)	50.00	July 1, 2003
630-699	(869-050-00119-5)	37.00	[7]July 1, 2003
700-799	(869-050-00120-9)	46.00	July 1, 2003
800-End	(869-050-00121-7)	47.00	July 1, 2003
33 Parts:			
1-124	(869-050-00122-5)	55.00	July 1, 2003
125-199	(869-050-00123-3)	61.00	July 1, 2003
200-End	(869-050-00124-1)	50.00	July 1, 2003
34 Parts:			
1-299	(869-050-00125-0)	49.00	July 1, 2003
300-399	(869-050-00126-8)	43.00	[7]July 1, 2003
400-End	(869-050-00127-6)	61.00	July 1, 2003
35	(869-050-00128-4)	10.00	[6]July 1, 2003
36 Parts			
1-199	(869-050-00129-2)	37.00	July 1, 2003
200-299	(869-050-00130-6)	37.00	July 1, 2003
300-End	(869-050-00131-4)	61.00	July 1, 2003
37	(869-050-00132-2)	50.00	July 1, 2003
38 Parts:			
0-17	(869-050-00133-1)	58.00	July 1, 2003
18-End	(869-050-00134-9)	62.00	July 1, 2003
39	(869-050-00135-7)	41.00	July 1, 2003
40 Parts:			
1-49	(869-050-00136-5)	60.00	July 1, 2003
50-51	(869-050-00137-3)	44.00	July 1, 2003
52 (52.01-52.1018)	(869-050-00138-1)	58.00	July 1, 2003
52 (52.1019-End)	(869-050-00139-0)	61.00	July 1, 2003
53-59	(869-050-00140-3)	31.00	July 1, 2003
60 (60.1-End)	(869-050-00141-1)	58.00	July 1, 2003
60 (Apps)	(869-050-00142-0)	51.00	[8]July 1, 2003
61-62	(869-050-00143-8)	43.00	July 1, 2003
63 (63.1-63.599)	(869-050-00144-6)	58.00	July 1, 2003
63 (63.600-63.1199)	(869-050-00145-4)	50.00	July 1, 2003
63 (63.1200-63.1439)	(869-050-00146-2)	50.00	July 1, 2003
63 (63.1440-End)	(869-050-00147-1)	64.00	July 1, 2003
64-71	(869-050-00148-9)	29.00	July 1, 2003
72-80	(869-050-00149-7)	61.00	July 1, 2003
81-85	(869-050-00150-1)	50.00	July 1, 2003
86 (86.1-86.599-99)	(869-050-00151-9)	57.00	July 1, 2003
86 (86.600-1-End)	(869-050-00152-7)	50.00	July 1, 2003
87-99	(869-050-00153-5)	60.00	July 1, 2003
100-135	(869-050-00154-3)	43.00	July 1, 2003
136-149	(869-150-00155-1)	61.00	July 1, 2003
150-189	(869-050-00156-0)	49.00	July 1, 2003
190-259	(869-050-00157-8)	39.00	July 1, 2003
260-265	(869-050-00158-6)	50.00	July 1, 2003
266-299	(869-050-00159-4)	50.00	July 1, 2003
300-399	(869-050-00160-8)	42.00	July 1, 2003
400-424	(869-050-00161-6)	56.00	July 1, 2003
425-699	(869-050-00162-4)	61.00	July 1, 2003
700-789	(869-050-00163-2)	61.00	July 1, 2003
790-End	(869-050-00164-1)	58.00	July 1, 2003
41 Chapters:			
1, 1-1 to 1-10		13.00	[3]July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3-6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10-17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3]July 1, 1984
19-100		13.00	[3]July 1, 1984
1-100	(869-050-00165-9)	23.00	[7]July 1, 2003
101	(869-050-00166-7)	24.00	July 1, 2003
102-200	(869-050-00167-5)	50.00	July 1, 2003
201-End	(869-050-00168-3)	22.00	July 1, 2003
42 Parts:			
1-399	(869-050-00169-1)	60.00	Oct. 1, 2003
400-429	(869-050-00170-5)	62.00	Oct. 1, 2003
430-End	(869-050-00171-3)	64.00	Oct. 1, 2003
43 Parts:			
1-999	(869-050-00172-1)	55.00	Oct. 1, 2003
1000-end	(869-050-00173-0)	62.00	Oct. 1, 2003
44	(869-050-00174-8)	50.00	Oct. 1, 2003
45 Parts:			
1-199	(869-050-00175-6)	60.00	Oct. 1, 2003
200-499	(869-050-00176-4)	33.00	[9]Oct. 1, 2003
500-1199	(869-050-00177-2)	50.00	Oct. 1, 2003
1200-End	(869-050-00178-1)	60.00	Oct. 1, 2003
46 Parts:			
1-40	(869-050-00179-9)	46.00	Oct. 1, 2003
41-69	(869-050-00180-2)	39.00	Oct. 1, 2003
70-89	(869-050-00181-1)	14.00	Oct. 1, 2003
90-139	(869-050-00182-9)	44.00	Oct. 1, 2003
140-155	(869-050-00183-7)	25.00	[9]Oct. 1, 2003
156-165	(869-050-00184-5)	34.00	[9]Oct. 1, 2003
166-199	(869-050-00185-3)	46.00	Oct. 1, 2003
200-499	(869-050-00186-1)	39.00	Oct. 1, 2003
500-End	(869-050-00187-0)	25.00	Oct. 1, 2003
47 Parts:			
0-19	(869-050-00188-8)	61.00	Oct. 1, 2003
*20-39	(869-050-00189-6)	45.00	Oct. 1, 2003
40-69	(869-050-00190-0)	39.00	Oct. 1, 2003
70-79	(869-050-00191-8)	61.00	Oct. 1, 2003
80-End	(869-050-00192-6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1-51)	(869-050-00193-4)	63.00	Oct. 1, 2003
1 (Parts 52-99)	(869-050-00194-2)	50.00	Oct. 1, 2003
2 (Parts 201-299)	(869-050-00195-1)	55.00	Oct. 1, 2003
3-6	(869-050-00196-9)	33.00	Oct. 1, 2003
7-14	(869-050-00197-7)	61.00	Oct. 1, 2003
15-28	(869-050-00198-5)	57.00	Oct. 1, 2003
29-End	(869-050-00199-3)	38.00	[9]Oct. 1, 2003
49 Parts:			
1-99	(869-050-00200-1)	60.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
17.1–17.95	(869–050–00209–4)	62.00	Oct. 1, 2003
17.96–17.99(h)	(869–050–00210–8)	61.00	Oct. 1, 2003
17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2004 CFR set		1,342.00	2004
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Subscription (mailed as issued)		325.00	2004
Individual copies		2.00	2004
Complete set (one-time mailing)		298.00	2003
Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.

Public Laws

108th Congress

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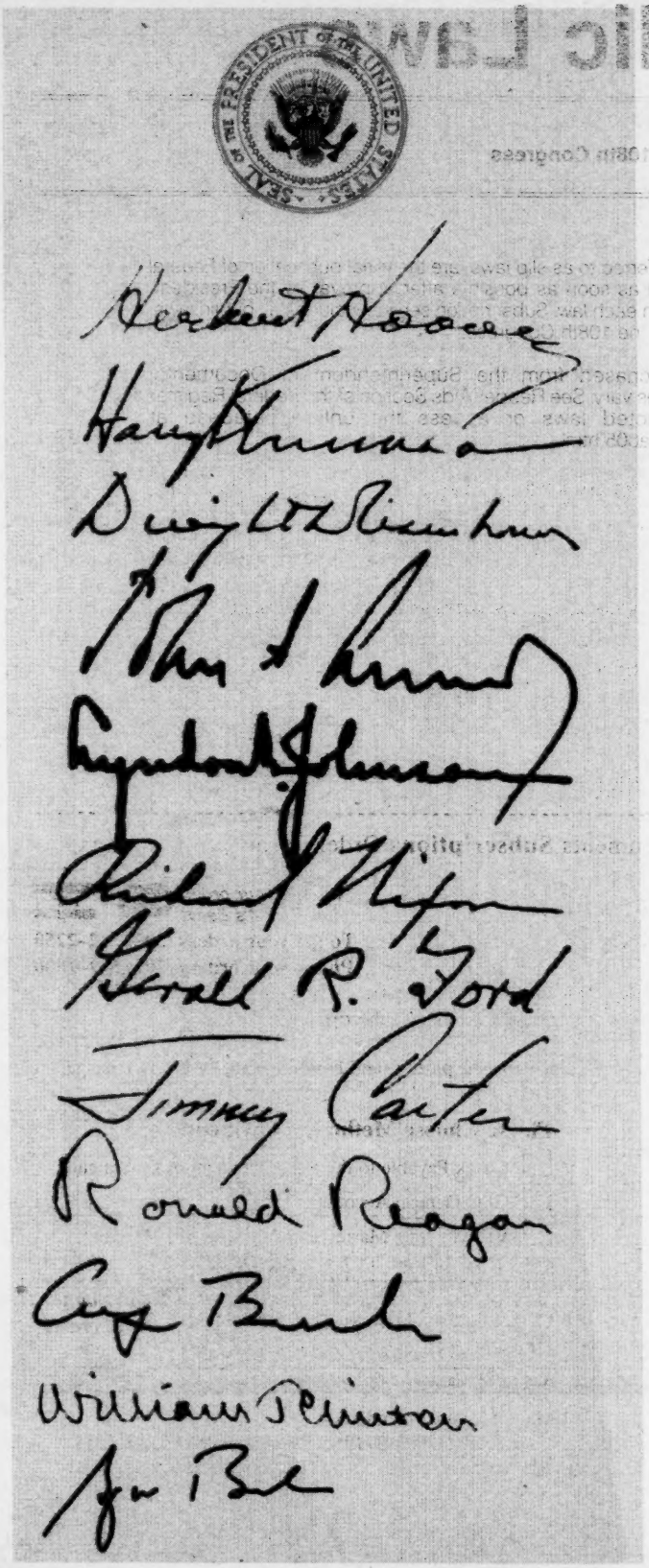

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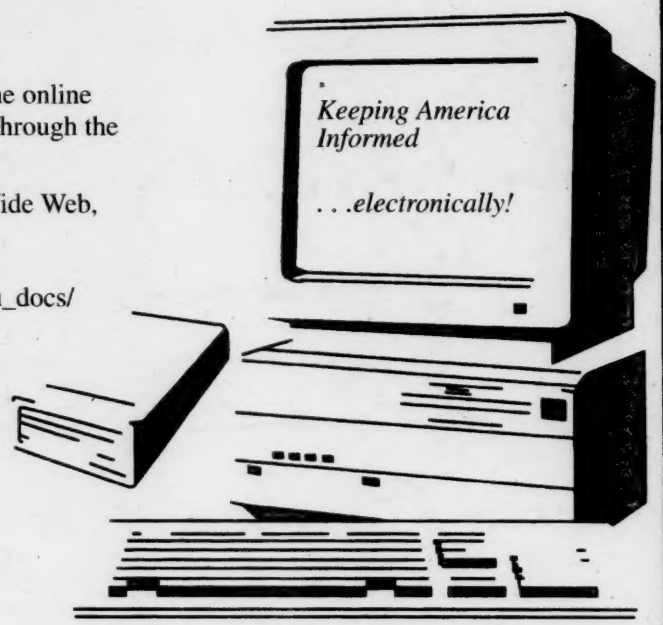

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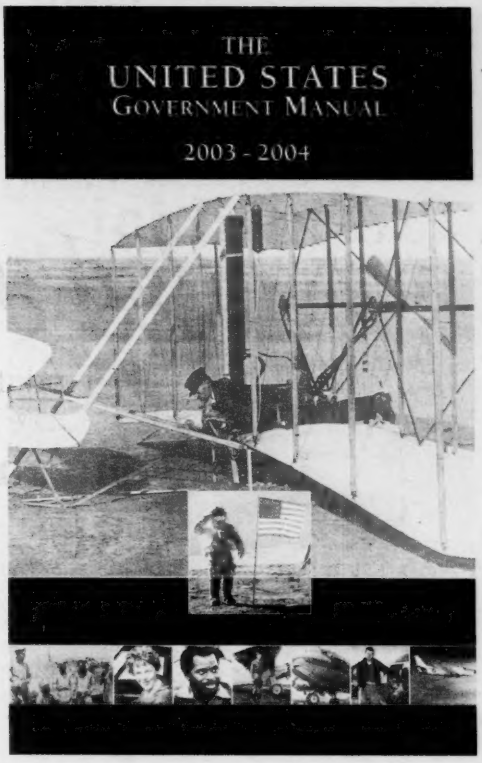

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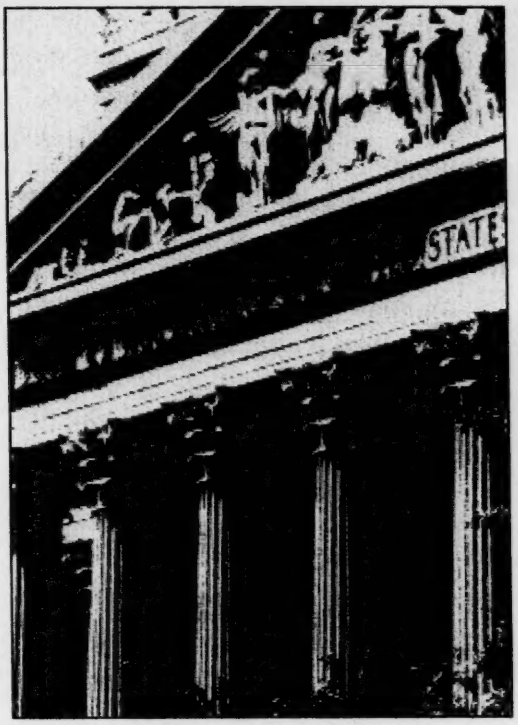

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